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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Eighty-ninth session

Summary record of the 2424th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 26 April 2016, at 3 p.m.

Chair: Ms. Crickley

Contents

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Twenty-first to twenty-third combined periodic reports of Spain

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The meeting was called to order at 3 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Twenty-first to twenty-third combined periodic reports of Spain (CERD/C/ESP/21-23; CERD/C/ESP/Q/21-23; HRI/CORE/ESP/2015)

1. *At the invitation of the Chair, the delegation of Spain took places at the Committee table.*

2. **Ms. Menéndez** (Spain) said that putting in place policies to promote equality and to eliminate all forms of discrimination was a priority of the Government of Spain. A number of important legislative amendments and policy developments had taken place in Spain since the submission of the State party report (CERD/C/ESP/21-23) in August 2014. The Criminal Code had been revised to better tackle hate crimes by clarifying the definitions of the relevant offences, introducing more severe sentences and criminalizing new offences, such as use of the Internet to spread information that incited hate crimes. The Additional Protocol to the Council of Europe Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems had entered into force for Spain in 2015.

3. New rules and regulations for migrant holding centres, adopted in March 2014, contained provisions regulating the most important aspects of their operations, including the rights and obligations of detainees. Organic Act No. 4/2015 on the protection of public safety required the security forces to adhere to the principles of non-discrimination, proportionality and equality when conducting identity checks. Legislation enacted in April 2015 strengthened support for victims of crime, including racially motivated acts. A network of victims' assistance offices had been set up to enable persons who believed they had been victims of racial or ethnic discrimination to obtain information and guidance on their rights and on the specialized services available to assist them in submitting a complaint and in seeking psychological support.

4. The Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance, adopted in 2011, was currently the main instrument guiding the Government's approach to combating racial discrimination and implementing the State party's obligations under various international human rights treaties. The Strategy sought to address the particular challenges faced by Spanish society in relation to the significant increase in the country's immigrant population in recent years.

5. **Ms. Iturzaeta Manuel** (Spain) added that the Comprehensive Strategy provided a framework for institutional cooperation and coordination and for collaboration with civil society. An agreement signed in 2015 by a number of Government entities and ministries encouraged collaboration in policymaking, training and awareness-raising activities, data collection and research aimed at preventing and detecting racism, xenophobia and intolerance. Evaluations would be conducted periodically to assess progress in implementing the Strategy and identify challenges to be addressed in the future.

6. **Ms. Menéndez** (Spain) said that the Government was working to enhance the collection of data on racist and xenophobic incidents and racial discrimination, which was essential to developing appropriate policies and designing prevention and protection measures. The criminal statistics system had been improved in order to record accurate, disaggregated data on incidents motivated by racism or xenophobia. Training had been provided to around 22,000 law enforcement officials and a police training manual and action protocol had been developed in order to clearly set out the regulations on identifying and recording racist or xenophobic incidents and improve police handling of such incidents.

Training had also been carried out to enable health-care professionals to identify and report injuries resulting from acts of racism, hate or discrimination.

7. **Ms. Candela Quintanilla** (Spain) said that numerous studies and surveys had been carried out to enhance understanding of the causes of racial discrimination in Spain so as to be able to design more effective public policies. The Government published annual reports on racial discrimination and related issues and had also produced practical guides and training materials to guide both the general public and specialized audiences in tackling racism and xenophobia.

8. **Ms. Menéndez** (Spain) said that a plan on coexistence had been drafted in 2016 to prevent bullying and violence in schools and to promote inclusive education. Numerous training projects, including the publication of a manual on preventing and detecting racism and xenophobia in schools, had been carried out to raise awareness of those issues among professionals in the education system.

9. **Mr. Aya Onsalo** (Spain) said that a special prosecutor for equal treatment and against discrimination had been appointed in 2011 to provide an institutional response to the problem of discrimination. A network of prosecutors had also been set up to provide specialized protection to victims of hate crimes and racial discrimination. The prosecutors were responsible for detecting, investigating and prosecuting hate crimes in their respective regions.

10. **Ms. Menéndez** (Spain) said that a framework protocol had been adopted in 2014 with a view to coordinating the work of all relevant government bodies responsible for dealing with unaccompanied minors. It was intended to ensure that the identification and registration of such minors was carried out in accordance with the principle of the best interests of the child, regardless of nationality. Efforts to protect the Gypsy population and support their integration were guided by the National Strategy for the Social Inclusion of the Gypsy Population and the plans of action for its implementation. A wide range of activities had been carried out to achieve the Strategy's objectives.

11. The most recent reports and surveys had shown that the Spanish population continued to become more tolerant and accepting towards immigrants. Nonetheless, the Government was aware that much remained to be done. It intended to focus its future efforts on several specific challenges, namely combating hate speech; preventing the dissemination of racist or xenophobic content on the Internet and at sporting events; improving the identification and recording of incidents of racism, xenophobia and intolerance in general; providing training to legal professionals and improving the collection of data in the judicial sphere on crimes related to racism and other forms of intolerance; and continuing to raise awareness and collaborate with civil society to curb discrimination, racism and xenophobia, with special attention to victims of those phenomena.

12. **The Chair** thanked the delegation for their introductory remarks and commended the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

13. **Mr. Murillo Martínez** (Country Rapporteur) said that there had been a number of significant developments in Spain in the fight against racism and discrimination, such as the reforms to the Criminal Code, the appointment of the special prosecutor for equal treatment and against discrimination and the efforts made to combat hate speech and racial profiling. At the same time, the economic and financial crisis had led to drastic cuts in the social welfare system, which had been particularly detrimental to the most vulnerable populations. The humanitarian crisis in the Mediterranean region had generated internal tension in Spain. The tragic situation of migrants and asylum seekers was an enormous challenge for Europe as a whole. The Committee would be interested to learn more about the steps taken by the

Government to address that crisis. In particular, the deaths of 15 African migrants in February 2015, in which the Spanish Civil Guard had been implicated, was of great concern. Had exhaustive investigations been conducted to determine exactly what had happened? The ongoing political crisis in Spain could also potentially have important consequences in relation to human rights considerations.

14. The progress achieved by Spain in eliminating racial discrimination should be measured against two important benchmarking frameworks, one being the Sustainable Development Goals and the 2030 Agenda for Sustainable Development and the other the Durban Declaration and Programme of Action. The latter condemned racism and racial discrimination and had given greater visibility to persons of African descent in international law and highlighted the negative effects of the transatlantic slave trade and the institution of slavery in the Americas, in which Spain had played a leading role. The State party should take steps to raise public awareness, including through school curricula, of the country's historical involvement in the slave trade and of the enduring impact of slavery on persons of African descent around the world.

15. He would like to know whether the State party had provided, or planned to provide, reparation to the descendants of victims of the slave trade, whether persons of African descent were encouraged to play an active role in public life in Spain and whether they were represented in national decision-making bodies. Noting with concern that Spanish citizens of African descent and their children were, to a certain extent, still treated as foreign nationals in their own country, he asked what steps the State party was taking to remedy that situation of inequality. The State party should act without delay in order to forestall the civil unrest that had occurred in other countries as a result of social disenfranchisement and unequal treatment of certain groups of citizens.

16. Noting that Spain was the fourth most popular route of entry to Europe for migrants and that some 70 asylum seekers had drowned in Spanish waters in 2015, he asked what the State party was doing to address the migration crisis and what its policies were on granting international protection and welcoming migrants seeking asylum or refugee status. It would also be useful to know whether the public had access to reliable statistical data on the migration situation in Spain, including both the recent influx of asylum seekers and the outflow of immigrants returning to their countries of origin as a result of the financial crisis in Spain. He wished to know how the migrant population was contributing to the country's development and whether the public was informed of its contribution, especially given the common perception that migrants deprived Spanish nationals of employment opportunities and other benefits.

17. Although reports received from non-governmental sources pointed to a reduction in racial profiling in the State party, the practice still appeared to be widespread, with migrants from sub-Saharan Africa in particular being singled out by law enforcement officers for identity checks. He asked what measures the State party had taken to eradicate that practice. The Committee had also received reports that persons held in migrant holding centres were often subjected to torture and other forms of ill-treatment assault and that female detainees routinely suffered sexual assault at the hands of public officials and law enforcement officers. While the Committee noted that the State party had taken steps to address the situation in migrant holding centres, it would appreciate additional information on the progress made in that regard. He requested the delegation to comment on allegations that, in Ceuta and Melilla, migrants from sub-Saharan Africa were treated less favourably than migrants from other regions and that their freedom of movement was often severely restricted.

18. In Spain, the growing prevalence of hate speech towards migrants and the emergence of far-right political parties was of concern, although the problem was less serious than in other European countries. He wondered what the Government was doing to

keep the situation in check. Alternative sources attributed many of the problems relating to racism and xenophobia in the country to a lack of visible political leadership in the fight against those phenomena. He invited the delegation to comment on that observation.

19. The disproportionate impact of the financial crisis on the migrant population had led to the emergence of "ghetto" schools, where the vast majority of students were migrants or belonged to an ethnic minority. He asked what measures the State party had taken to address what could be perceived as educational segregation. Lastly, he drew attention to the recommendations of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, who had called upon the State party to earmark funding for social integration, especially of the Roma population; to ensure that any austerity measures adopted were not discriminatory towards disadvantaged segments of society; and to ensure equal access to social services for all. He also noted that NGOs and civil society organizations had urged the State party to review its aggressive border policy vis-à-vis African migrants and to increase the fairness of its visa regime.

20. **Mr. Calí Tzay**, recalling that Spain had adopted the United Nations Guiding Principles on Business and Human Rights and that the Government was preparing a national action plan aimed at ensuring compliance with those principles by Spanish multinational companies operating abroad, asked when that plan would be adopted and whether it would accurately reflect the views of civil society, which had hitherto been excluded in favour of protecting the interests of the multinationals in question. The Committee was deeply concerned over the negative impact of the activities of certain Spanish multinational companies working in the extractive industries on indigenous lands in Latin America, particularly as the companies in question had reportedly failed to obtain the free, prior and informed consent of the indigenous communities affected before beginning their operations. For example, in Paraguay, the State-sanctioned deforestation operations of a Spanish multinational company had apparently driven an indigenous community out of its jungle home, cutting off its means of subsistence.

21. He requested additional information on the measures taken to address the phenomenon of "ghetto" schools and ensure an even distribution of students between schools. He also invited the delegation to comment on reports that it was still common for press articles to exhibit a racist bias. Lastly, he wished to know whether the State party intended to ratify the amendments to article 8 of the Convention concerning financing of the Committee's activities and whether it intended to recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals in accordance with article 14 of the Convention.

22. **Mr. Kemal** said that the adoption of the numerous new legislative measures outlined in the State party report was a welcome development. However, the Committee continued to harbour serious concerns over the scale of the European migration crisis and the consequences of the large influx of migrants arriving in European countries, including Spain. He invited the delegation to share its assessment of the likely impact of the arrival of large groups of migrants in Spain in the short and medium term and to indicate how the Government intended to prepare for such an eventuality. Receiving countries could not afford to take a laissez-faire approach to mass migration and offer only short-term solutions to the problem. International financial assistance was the key to generating sufficient employment opportunities to induce people to remain in their countries of origin rather than migrating. Initiatives such as the United Nations Alliance of Civilizations, initially proposed by the Government of Spain, could prove effective in alleviating the problem of mass migration.

23. The Committee would also like to receive detailed information on the implementation of the special regime established under Organic Act No. 4/2015 on the protection of public safety, which would allow the denial of entry at the border and the

summary return of migrants, especially in Ceuta and Melilla, and on the reported broadening of the scope of Spanish anti-terrorism legislation to grant the police sweeping powers to arrest persons suspected of terrorism.

24. The situation of the Roma in Spain appeared to have improved considerably, although more needed to be done. Persons of African descent, meanwhile, continued to suffer from the effects of racial profiling, which, in extreme cases, could prevent them from going about their daily lives. Noting that the State party did not collect disaggregated data in the manner prescribed by the Committee on the grounds that to do so would constitute discrimination, he invited the delegation to consult the guidance note on a human rights-based approach to data, prepared by the Office of the United Nations High Commissioner for Human Rights.

25. **Mr. Avtonomov**, commending the methodology used in preparing the State party report and particularly the effort made to respond to the Committee's previous recommendations, said that in future it would be helpful if the State party could flag the specific topic addressed in the relevant recommendation. The report indicated that the State party had condemned the enslavement of Africans and the slave trade, but he wondered whether it also had a position on the enslavement of indigenous peoples in the Americas during the period of Spanish colonization. As to legislation, he wondered whether all the reforms envisaged in the bill on amendment of the Criminal Code had in fact occurred and whether the amended Code was in force. The new law on public safety had been presented as a step forward in the protection of human rights, notably the rights of foreigners and migrants, but, according to information received, in some ways the new legislation had instead exacerbated the situation. Foreigners were now obliged, for example, to carry official identity papers, or a passport, issued in their country of origin, but that was not always possible, particularly for refugees, who might have lost their papers. Similarly, the Act broadened the scope for carrying out identity checks on the rather vague grounds of "prevention of administrative offences". He would appreciate some clarification of those provisions.

26. **Ms. Dah** said that, despite the overall clarity of the report and the commendable wealth of detail it contained, even a close reading gave no hint of the State party's policy on integration of immigrants, whether recent or long-settled, into the population of Spain. She was particularly interested in the situation of Afro-descendants and migrants of African origin. The State party had explained its view on the collecting of statistics on racial or ethnic origin, namely that it might result in discrimination, but such statistics were in fact an indicator of the success or failure of any given policy. She would like to know what proportion of members of parliament or of regional or local assemblies, for example, were also members of a particular ethnic group, and how visible such groups were in the justice system.

27. It was striking that the State party had conducted numerous studies on the problems caused by discrimination, but she wondered what lessons had been learned from them. Had they made it possible, for example, to quantify the impact of the financial crisis on integration policy or on education or health policies? She was also curious to know whether demands for referendums on regional autonomy were prompted by purely economic considerations or if there was also an ethnic factor at work.

28. **Ms. McDougall** said that she, too, was interested in the situation of populations that could no longer be considered migrants as they had been resident in the country for a long time and were no longer the subject of the kind of concerns arising from recent migrant flows. With regard to the Roma, for example, she found it difficult to form a picture of how their situation had improved since the State party's previous report. Similarly, information received from Spanish NGOs suggested that Afro-descendants were not necessarily represented on panels or committees set up to address integration issues that affected those

very communities. They should be a part of efforts to address issues from across the whole polity. She would welcome the delegation's views on those matters.

29. In line with Sustainable Development Goal 10, on reducing inequality within and between countries, it was important for governments to ensure that the burden of crises such as the recent financial crisis was not born in undue measure by minority populations. The collection of statistical data was recommended as a means of helping the competent authorities to appreciate the relative situations of the various groups in society. She was interested to know if the Spanish Government was looking at economic disparities between the general population and the Roma and Afro-descendant populations and whether it had any plans for special measures to improve the situation of the latter groups.

30. **Ms. Shepherd** enquired whether Spain had ratified the ILO Domestic Workers Convention, 2011 (No. 189). She pointed out that, as education had the potential to break down stereotypes and address racial discrimination, the right to education under the Convention was not about access only but also about content. Accordingly, she wondered to what extent the curriculum in the State party's education system brought out the contribution that had been made by Afro-descendants to the development of Spanish society. The report mentioned the State party's support for the International Decade for People of African Descent, whose Programme of Activities called on States to promote greater knowledge and recognition of and respect for the culture, history and heritage, and contribution of people of African descent, including through education. She wondered what importance was attached in practice to the Decade in Spain, given that there was a widespread perception that Afro-descendants were people who fed off the State: if people could see them as having made a contribution to Spain's development, they could be seen not as beggars but as a group with its own right to development.

31. The State party report referred to the United Nations Alliance of Civilizations, the aim of which was to promote dialogue and cooperation between different communities, cultures and civilizations and to build bridges to unite peoples and individuals, irrespective of their cultural or religious differences. She wondered how such an alliance was possible in situations where a particular issue continued to cause conflict, the issue in question being the actions of Spain during its colonial past. Caribbean countries, for example, were calling for a discussion on reparatory justice for the populations concerned. Similarly, there was tension in Spain itself surrounding its national day. Such an event was supposed to bring people together around a set of shared values, yet the date commemorated — the anniversary of Columbus's landing in the Americas — sent different messages to different people. She would like to know what steps the State party had taken to enter into dialogue on those issues with people who had been historically marginalized as a result of colonialism. Such a dialogue could be a route to peace and understanding.

32. **Mr. Khalaf** said that he would like additional information on the remedy of *amparo*, which was designed to grant judicial protection from discrimination. Would *amparo* cover violations of articles of the Convention, for example? Was it available only after other remedies had been exhausted and was it only for Spanish citizens or might any victim apply for *amparo*, regardless of nationality? Among the large number of refugees and migrants coming to Spain were members of small ethnic groups that were at risk of disappearing completely. It was therefore important for members of such vulnerable groups not to be dispersed across the territory but to be able to live as a community. He wondered whether Spain had a policy of keeping such communities together. He would appreciate an explanation for the practice of illegal summary refoulement by the Civil Guard of migrants arriving at the Spanish border. Such actions deprived victims of two specific rights, namely the right to legal assistance and the right to an interpreter.

33. **Mr. Amir** said that he understood that the majority of persons of African descent lived in a single district in Madrid. He wondered whether such an area, housing a

population entirely drawn from the same culture and ethnic background, might be considered a ghetto. In any case, when groups were isolated in terms of housing and schools, for example, and were not integrated into the mainstream of society, security risks could arise. In Belgium, following the recent terrorist attacks, it had been found that those involved had lived in a more or less closed community in a district over which society at large had little control. He was not sure that an integration policy could be deemed sound if it failed to ensure that minority groups became integrated into society.

34. **Mr. Bossuyt**, noting that the country's approximately 750,000 Gypsies were not recognized as a minority, asked whether a distinction was made between Spanish-born Gypsies and Roma from Romania and elsewhere in Eastern Europe living in Spain, and whether the Government had a special policy for the latter group, particularly if they were unable to support themselves. The State party report indicated that the labour force participation rate was slightly higher among Gypsies than among the overall population but also that the unemployment rate among Gypsies was higher than average. How was that possible? Welcoming the fact that 100 per cent of Gypsy children were enrolled in primary school, he invited the delegation to comment on how that result had been achieved. He requested details of the special agreement on health-care provision for foreigners in an irregular situation and the conditions for obtaining such coverage.

35. **Mr. Yeung Sik Yuen** said that the fact that Spain was among the most popular destinations for asylum seekers reflected well on the country's quality of life and the openness of its society. However, the influx of asylum seekers also presented problems, and Spain faced challenges in meeting its international obligations in that area. He expressed concern at the perceived unfairness of the asylum application process and the unduly long waiting times, particularly for certain Malians, Ukrainians and Iraqis, whose cases had taken between three and four years to be considered. He invited the delegation to comment on the treatment of asylum seekers from sub-Saharan Africa attempting to enter Spain through Ceuta and Melilla and on how the principle of non-refoulement was respected.

36. **Mr. Murillo Martínez** said that he would welcome detailed information on studies on the incidence of violence against Roma women, which had been mentioned in NGO reports. He also wished to hear more about training provided to law enforcement agents on the implementation of Organic Act No. 4/2015 on the protection of public safety in relation to identity checks and about the findings of the "Map of Discrimination in Spain". He invited the delegation to comment on the additional restrictions faced by persons in migrant holding centres in Ceuta and Melilla as compared with those on the mainland and on reports that stays in such centres could be excessively long, in some cases up to seven years. He also requested information on the difficulties faced by migrants and asylum seekers in exercising the right to family reunification and on the frequent freezing of asylum claims, particularly for applicants from sub-Saharan Africa; the criteria for obtaining citizenship and the reason for the dramatic increase in the number of rejected applications; and the barriers faced by migrants and asylum seekers, particularly those from Africa, in accessing housing.

37. **The Chair**, noting that, in general, throughout Europe members of the Roma community wished to be referred to as "Roma" and considered the term "Gypsy" to be derogatory, asked what the preferred term was in Spain. She would welcome clarification of whether the National Strategy for the Social Inclusion of the Gypsy Population covered both Spanish Roma and Roma from elsewhere and how the Strategy had been rated by the European Union. She would also be interested to know how the National Action Plan for Social Inclusion 2013-2016 had been evaluated and whether specific measures to address racial discrimination would be included in the country plan for the implementation of the Sustainable Development Goals.

38. **Mr. Kut** said that, while the Committee was justified in requesting statistics that would reveal the existence of discrimination, or the lack thereof, in a particular State party, it should not, in his view, request data on the racial origin of the population. He concurred with the State party's view that the collection of such statistics would be discriminatory. With regard to the issues that had been raised in relation to the State party's past, he did not believe that the Convention provided the grounds for settling historical accounts. As to the refugee crisis, the fact that Spain had not closed its borders as many other European States had done was commendable. It was apparent from the report that the Government was aware of the responsibilities that that decision entailed, and although some of the Committee's comments might be seen as criticism, he stressed that it wished to support the State party in resolving the difficulties it faced.

39. **Mr. Cereceda Fernández-Oruña** (Spain) said that Organic Act No. 4/2015 on the protection of public safety, which had entered into force in July 2015, marked an important step forward. It was the first law to provide that, when carrying out identity checks, the police must adhere strictly to the principles of proportionality, equal treatment, and non-discrimination on the grounds of birth, nationality, racial or ethnic origin, sex, religion, age, disability, sexual orientation or gender identity. Unlike the previous law, the new Act specified that identity checks should be carried out only if there were indications that the individual in question had participated in the commission of an offence or if the identity check was considered necessary in order to prevent the commission of a crime. Individuals must always be clearly informed of the reason for the identity check and could only be requested to accompany police officers to the nearest police station if it was not possible to check their identity on the spot; in such cases, they could not be held at a police station for more than six hours. Police stations were required to keep a register of all the identity checks carried out, an extract of which was to be submitted monthly to the Public Prosecution Service, with details of the length of each check. Individuals who had to go to a police station for an identity check were now provided with a confirmation slip indicating the time and duration of the check as well as the reason and the names of the police officers involved. Instructions for law enforcement agents had also been issued to accompany the Act.

40. Since the Act had entered into force, there had been a 15 per cent decrease in the number of on-the-spot identity checks and a 27 per cent decrease in checks at police stations. Under the Act, foreign nationals could not be deprived of their original identity documents unless they were the subject of an investigation for the commission of a crime, not an administrative offence. Foreign nationals and Spanish citizens had virtually the same obligations in terms of identity documents, as the latter were required to carry a valid identity card as of the age of 14 and to submit to identity checks when so requested by the relevant authorities for the purpose of investigating and preventing crimes. Act No. 12/2009 of 30 October 2009 on the right to asylum set out the details of the documentation required by asylum seekers.

41. **Ms. Candela Quintanilla** said that the collection of statistics on the ethnic composition of the population was restricted by Spanish legislation and regulations. Organic Personal Data Protection Act No. 15/1999 specifically provided that personal data related to racial origin, health and sexuality could be collected, processed and released only where the law so provided or the individual concerned gave express consent. The Government considered that keeping statistics on the racial origin or ethnicity of the population would contribute to discrimination, but it did collect data on the nationality of people living in Spain. According to the findings of a nationwide survey on perceptions of discrimination conducted in 2013, 90 per cent of respondents recognized and were concerned about the existence of some form of discrimination in Spain and more than 50 per cent strongly supported an integrated society. However, some respondents expressed

reluctance about living alongside immigrants. The Government intended to take action to change such attitudes.

42. A similar survey had been conducted among potential victims of discrimination on the grounds of racial or ethnic origin from eight ethnic groups: Eastern European, sub-Saharan African, North African, East Asian, Indian/Pakistani, Afro-Caribbean and Afro-Latino, Andean/Latin American and Spanish Gypsies. The majority of respondents had reported that they had experienced discrimination on the basis of place of origin, skin colour, cultural practices or religious beliefs and that the discrimination had occurred in the workplace, in public and leisure facilities, in public administration institutions and in housing. The survey had highlighted the very low level of reporting of discrimination: only 10.2 per cent of respondents had lodged a complaint, mostly for physical or verbal assault.

The meeting rose at 6.05 p.m.

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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination
Eighty-ninth session

Summary record of the 2425th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 27 April 2016, at 10 a.m.

Chair: Ms. Crickley

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***Combined twenty-first to twenty-third periodic reports of Spain* (continued)**

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The meeting was called to order at 10.05 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined twenty-first to twenty-third periodic reports of Spain (continued) (CERD/C/ESP/21-23; CERD/C/ESP/Q/21-23 and HRI/CORE/ESP/2015)

1. *At the invitation of the Chair, the delegation of Spain took places at the Committee table.*

2. **Ms. Mingulto Gil** (Spain) said that migrant holding centres had been set up under Organic Act No. 2/2009 to house foreign nationals awaiting expulsion or return to their countries of origin. The centres were not detention facilities; irregular migrants were placed therein as a preventive, precautionary measure and could be held for a maximum of 60 days. There were also two temporary migrant reception centres in Ceuta and Melilla. Those centres provided basic social services to migrants, including health-care services, psychological support, legal advice, interpretation services and assistance in integrating into Spanish society. In 2014, the two centres had received 8,555 persons. The number had risen to 13,076 in 2015, exceeding capacity by 127 per cent at the Ceuta facility and 325 per cent at the Melilla facility. In general, persons were held at the centres for between 2.5 and 3.5 months.

3. Under domestic law, all foreign minors housed at the centres enjoyed the same access to education as Spanish children. In 2015, a total of 1,324 requests for education had been submitted in the Melilla centre. However, owing to the short duration of stays at the centre, only 48 children were currently receiving education.

4. **Mr. Cereceda Fernández-Oruña** (Spain) said that, within the framework of the European Union, Spain had adopted a response to the current migration crisis that reflected solidarity both with populations that had been forced to flee their countries of origin and with the other European countries attempting to accommodate them. It had put in place a comprehensive policy based on the four pillars of the European agenda on migration — reduction of incentives for irregular migration, border management, a common asylum policy and a new policy on legal migration — together with the relocation and resettlement of refugees as part of the European Union-wide plan to tackle the migration crisis and the adoption of a flexible approach based on respect for human rights. The policy also took account of the need to address the factors giving rise to migration. Spain had promoted the creation of the Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa.

5. In the light of the European Union-Turkey statement of 18 March 2016 on the migration crisis, a number of Spanish law enforcement officials and experts would be seconded to the European Union to assist with asylum support and border management. The Office for Asylum and Refugees of the Ministry of Internal Affairs had been designated the national contact point for migration issues, and a liaison unit had been set up within the Spanish embassy in Ankara. Spain had undertaken to resettle 1,449 persons and to relocate approximately 15,800. A national plan on resettlement had been adopted in late 2015, which provided for 854 places, of which 258 would be available by June 2016, and the budgets and staffing levels of the relevant government ministries had been significantly increased to cover the work involved. An inter-ministerial commission had been set up to coordinate government efforts to meet the needs of refugees and to cooperate with civil society groups, NGOs and the Office of the United Nations High Commissioner for Refugees.

6. Domestic legislation had recently been introduced with a view to further safeguarding the rights of persons housed in migrant holding centres, including through

strengthening of judicial oversight. Under Organic Act No. 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, foreign nationals could only be placed in migrant holding centres following a ruling issued by an investigating judge. Moreover, a second tier of judges monitored respect for the rights of such persons, heard their complaints and carried out inspections where necessary. Residents could lodge complaints and appeals with the competent administrative or judicial bodies. Requests and complaints could also be addressed to the Ombudsman. Persons held in such facilities could contact and receive visits from national and international NGOs. They were provided with information on their rights in a number of languages and could contact representatives of the Office of the United Nations High Commissioner for Refugees.

7. Medical staff provided on-site health-care services in migrant holding centres, and patients could be transferred to a hospital where necessary. In 2014, the Government had signed an agreement with the Spanish Red Cross for the provision of humanitarian and social assistance in each centre, including legal advice on obtaining international protection, and had allocated funding for that purpose. Agreements were also to be signed with law firms for the provision of legal advice. Christian and Muslim bodies provided spiritual guidance in centres. In 2015, the average length of stay in migrant holding centres had been 24 days. In 2014 and 2015, the average occupancy rate in the centres had been less than 50 per cent of full capacity, and in earlier years it had never exceeded 68 per cent.

8. Basic training programmes for Civil Guard and police officials covered issues relating to human rights, hate crimes, racism, xenophobia, trafficking in persons and legislation on discrimination. Specialized training in that regard was also provided to victim-support and hate-crime units.

9. **Ms. Camy Gavilanes** (Spain) said that the provision on denial of entry at the border in Organic Act 4/2015 on the protection of public safety had in fact strengthened legal safeguards for migrants, ensuring their right to apply for international protection and asylum. The provision in question only covered the border fences surrounding Ceuta and Melilla, where the authorities had to deal with significant flows of migrants and sometimes violent attempts to enter Spanish territory illegally. Two border posts had been set up, one at Ceuta and one at Melilla, where migrants could lodge applications for asylum or international protection. The posts were accessible from Moroccan territory on an unrestricted basis and were staffed by lawyers, interpreters and representatives of NGOs. The establishment of the border posts had been welcomed by a representative of the Office of the United Nations High Commissioner for Refugees, the Ombudsman and the European Commission. The latter had considered that, because migrants could apply for international protection at the border, the principle of non-refoulement was not being violated.

10. It was worth noting that there was no international treaty or any provision of international or domestic law guaranteeing free entry to a country for foreign nationals at border posts where officials were not authorized to allow such persons to enter. It was also important to make a clear distinction between legal and illegal entry. A number of agreements had been signed with other countries providing for legal entry into Spain. All States had an obligation to safeguard their borders and their sovereignty and to prevent illegal practices such as smuggling or trafficking of migrants.

11. Act No. 19/2015 had modified the procedure and standardized the criteria for obtaining Spanish nationality through residence. Applicants were required to demonstrate adequate Spanish language skills and knowledge of Spanish society and culture. The exam questions were published to enable them to prepare; where applicants provided expired or incomplete documents, they were given time to obtain new documents; and the application procedure had been computerized and simplified. As a result, the number of rejected applications had fallen from 26 per cent in 2014 to 16 per cent in 2015.

12. *Amparo* appeals were intended to protect fundamental constitutional rights and freedoms, including the principle of equality and non-discrimination on the grounds of racial origin, sex, age or religion, which was enshrined under article 14 of the Constitution. Foreign nationals, including those in irregular situations, could lodge such appeals and had the right to effective legal protection and free legal assistance.

13. **Ms. Sepúlveda García de la Torre** (Spain) said that an exhaustive inquiry lasting more than 20 months had been carried out into the events of 6 February 2014 at El Tarajal beach, Ceuta, and into allegations that Civil Guard officers were guilty of negligent homicide and injury and of professional misconduct. On 15 October 2015, the charge of misconduct had been fully dismissed, while the charge of negligent homicide and injury had been provisionally dismissed pending receipt of a response from the Moroccan authorities to a request for autopsy reports for the victims recovered from Moroccan waters. To date, that response had not been received. The inquiry had found that the Civil Guard officials had used anti-riot gear in line with official regulations and protocols. The migrants concerned had not been persons found at sea and in need of assistance within the meaning of the relevant international conventions, but rather persons who had attempted to enter Spanish territory illegally, wilfully ignoring the instructions of the Moroccan and Spanish officials present at the time. Moreover, the persons who had drowned had jumped into the sea fully clothed at night after a tiring journey. According to forensic experts, only a few of the victims' injuries could have been caused by the impact of rubber bullets fired by the Civil Guard officers. An appeal had been lodged against the closing of the case and a final ruling had not yet been issued.

14. **Mr. Aya Onsalo** (Spain) said that the amendments to the Criminal Code had come into force in 2015, thereby clarifying and expanding the definition of concepts such as "hate crime", "racism" and "incitement to hatred". The punishment for such offences had also increased in severity. The use of the Internet or social media to commit such crimes had been criminalized and anyone found guilty of doing so could be barred from future access to the Internet or other electronic means of communication. Furthermore, the denial of genocide was punishable by law under the amended Code. Persons who had committed hate crimes or similar offences could be barred from working in education or leisure facilities where they might indoctrinate young people with hateful and discriminatory ideas.

15. The amendments to the Criminal Code had also expanded the scope of crimes classified as acts of terrorism, in keeping with Security Council resolution 2178 (2014), which called on Member States to take measures to prevent movements of terrorists. Accordingly, the act of travelling to a foreign country controlled by terrorist groups for collaborative purposes had been criminalized.

16. **Mr. Machimbarrena Cuerda** (Spain) said that the decision to use the term "Gypsy" in Spain, rather than the internationally preferred term "Roma" reflected a desire to preserve the traditional term. The term had no negative connotations and was used by the Gypsy community itself. In international contexts, however, Spanish officials generally used the term "Roma" instead.

17. The majority of Gypsies were socioeconomically and culturally well integrated in Spanish society. Disadvantaged members of the Gypsy community benefited from the same public policy measures as other disadvantaged members of the Spanish population, but special measures had also been put in place to meet the specific needs of the Gypsy community. Those measures had been well received and had contributed to exponential improvements in the living conditions of the Gypsy population since 1989. The Strategy for the Social Inclusion of the Gypsy Population, a core public policy instrument, was being implemented through an operational plan covering the period 2014-2016. Measures were being carried out at the national, regional and municipal level. The implementation rate in

2015 had been 90 per cent. That figure had been confirmed by the European Union Agency for Fundamental Rights.

18. Despite the financial crisis, net public investment in policies for the Gypsy community had been maintained. Where cuts had been unavoidable, they had been offset by funding from the European Social Fund. Nevertheless, the living conditions of the Gypsy community had worsened in some respects as a result of unemployment caused by the financial crisis. A midterm evaluation of the Strategy for the Social Inclusion of the Gypsy Population would be conducted in 2016 to identify needed corrective action. With regard to representation, the State Council of the Gypsy People, had been set up in 2005 to facilitate participation by members of the Gypsy community in the design of policies to benefit Gypsies.

19. A distinction was made between Spanish Gypsies and those of Eastern European origin. Although the national strategy was intended to benefit both groups equally, it was recognized that the latter required more support with regard to language, employment, health and education. A seminar was being planned for November 2016 to identify specific measures to address those needs.

20. Gypsies were not legally recognized as an ethnic minority, as the Gypsy population itself was not in favour of being labelled as such because it might hinder integration. As for education, almost 100 per cent of Gypsy children attended school, although efforts were needed to reduce truancy and dropout rates at the secondary level. Regarding gender-based violence, Gypsy women had access to the same social support services available to the rest of the population. Several studies had been carried out with a view to designing a specific protocol for addressing the issue of gender-based violence in Gypsy communities.

21. **Ms. Candela Quintanilla** (Spain) said that the "Map of Discrimination in Spain" was one of several initiatives designed to enhance understanding of discrimination in Spanish society and to identify related needs and resources at the local level. Various government departments and ministries were working together to establish policies and undertake activities for the prevention and detection of racism, xenophobia and racist discourse. For instance, awareness-raising campaigns had been organized for university students of journalism in Madrid. In addition, the Council for the Promotion of Equal Treatment and the Prevention of Discrimination based on Racial or Ethnic Origin had published a recommendation concerning the portrayal of Gypsies in the press and adopted a proposal aimed at preventing the use of discriminatory or racist speech in electoral campaigns.

22. The Government sought to emphasize the importance of the population of African descent in Spain and to put in place policies that strengthened support for Afro-descendants. It also supported civil society initiatives such as the World Conference AFROMADRID held in 2015, the focus of which had been recognition and justice for members of the African diaspora. Topics discussed had included hate crimes and victim support.

23. **Ms. Iturzaeta Manuel** (Spain) said that integration was one of the central pillars of the State party's migration policy. In her view, Spain had avoided the problems that other countries were currently experiencing as a result of its integration policies, which had a strong protective dimension, including special assistance for especially vulnerable groups of migrants. Between 2013 and 2015, the budget for integration policies had increased thanks to European funding. Financial assistance had been provided to civil society organizations working to improve the employability of migrants and to organizations that offered legal, psychological and language support to migrants. Funds had also been earmarked for programmes to assist unaccompanied minors, for humanitarian aid and health services for migrants and for immigration and refugee reception centres. Prevention of racism and discrimination was also a part of the country's integration policies, and

funding had been allocated for programmes to combat racism in schools and universities, for research on racial discrimination and for victim support.

24. Discrimination in the housing sector was a crucial obstacle to integration. The State plan on the promotion of the housing rental market, building rehabilitation and urban regeneration and renovation 2013-2016 sought to improve access to housing for low-income households. Benefits under the programme were available equally to Spanish citizens and to non-citizens residing legally in Spain. Programmes had also been implemented to enable victims to report incidents of discrimination in the housing sector, and efforts were being made to raise awareness of and prevent such discrimination.

25. **Mr. Guirao García** (Spain) said that all foreign nationals residing legally in Spain had access to public health-care services, as did victims of human trafficking and migrants requesting international protection. Persons with an irregular administrative status were entitled to free emergency health care and to antenatal, delivery and post-partum care. Non-nationals under the age of 18, regardless of immigration status, received the same health care as Spanish nationals. Programmes were in place at the regional level to provide health care to older persons whose situation was irregular and who lacked sufficient economic resources.

26. **Mr. López Soto** (Spain) said that the national school curriculum included instruction relating to Afro-descendants and their contribution to Spanish society. Students at the secondary level were taught about the Spanish colonization of the Americas and colonial life, the colonization and decolonization of Africa, the transatlantic slave trade and the cultural contribution of the African diaspora.

27. Organic Act No. 8/2013 on improving the quality of education underscored the importance of non-discrimination and universal access to education. The dropout rate among Gypsies and other ethnic communities had declined as a result of the implementation of changes introduced pursuant to the Act, including flexible schedules for students and individualized attention for those diagnosed with learning disabilities. The Act also envisaged the formulation of the plan for coexistence in schools mentioned in the previous meeting. The plan was intended to promote peaceful coexistence and prevent violence, including gender-based violence.

28. **Ms. Gómez López** (Spain) said that the Government of Spain was aware of the debate taking place within the Caribbean Community regarding the victims of slavery. It was important to note that the slave trade predated the creation of the international system for the protection and promotion of human rights. In her view, the best way to deal with the issue at present was to commemorate its victims and to prevent any recurrence of slavery. To that end, Spain had helped to fund the construction of a permanent monument in New York and had put in place a legal framework for the protection of human rights. It had also contributed to the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery and was actively involved in work on the Durban Declaration and the International Decade for People of African Descent.

29. A plan on business and human rights had been formulated with a view to ensuring the application of the United Nations Guiding Principles on Business and Human Rights. The plan, which was awaiting adoption, highlighted the importance of dialogue with indigenous communities in Latin America.

30. **Mr. Murillo Martínez** (Country Rapporteur) said that there was a discrepancy between the information provided by the State party and other information received by the Committee, particularly with regard to the concerns raised by the Special Rapporteur of the Human Rights Council on contemporary forms of racism, racial discrimination, xenophobia and related intolerance about conditions in migrant holding centres, including problems of sexual abuse; delays of two to five years or more in processing asylum requests for persons

in Ceuta and Melilla and excessively long stays in the temporary centres. The Committee would appreciate more information on those issues as well as on the law on equal treatment, the law on protection of public safety, implementation of the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance and formulation of a new human rights plan. He asked whether Royal Decree-Law No. 16/2012 would be reviewed to ensure humanitarian assistance for non-citizen minors and pregnant women. More information would also be appreciated on measures to deal with unaccompanied minors, particularly procedures for determining their age.

31. **Ms. McDougall** said that she remained concerned about the situation of the Roma and Afro-descendant populations. The delegation had mentioned numerous programmes and measures to improve the lot of the Roma, but information received from Roma groups indicated that their situation had in fact worsened. She wondered whether the delegation could provide specific data on the effectiveness of government initiatives designed to benefit the Roma.

32. **Mr. Yeung Sik Yuen** said that the Committee had received reliable information indicating that there were long delays in processing requests for asylum. The first decisions concerning some asylum seekers from Mali, for example, had been taken in March 2014, two years after they had entered the country. Because the security situation in southern Mali had by that time improved, their claims had been denied. In 2015, all 337 asylum requests from Malians from the south of Mali had been denied. Asylum requests from persons from the north of Mali, where the security situation was still precarious, remained pending.

33. Regarding the incident at El Tarajal beach in February 2014, he wondered how the Civil Guard officers could have had authority to fire rubber bullets if the migrants were in Moroccan territory, and he questioned whether the decision to fire, albeit with rubber bullets, had been called for. Since rubber bullets were not designed to kill, a charge of manslaughter might have been too harsh, but the officers involved should have been held to account for their actions. He asked whether any further investigation or action was envisaged with regard to the incident.

34. **Ms. Mingulto Gil** (Spain), noting that the report of the Special Rapporteur mentioned by Mr. Murillo Martínez had been published in 2013, said that significant resources had been allocated in recent years to address the increased influx of migrants and meet the country's obligations regarding persons seeking international protection, for example migrants from Syria. That had led to a reduction in the time spent by migrants in holding centres in Ceuta and Melilla and quicker transfer to the mainland. Current waiting times in the centres ranged from 2 to 3 months. She agreed that processing times of 2 to 3 years for asylum requests were too long, but pointed out that such requests required substantial documentation, verification and investigation. Additional resources would be allocated to those efforts in 2016 to speed up the processing of requests. She would ensure that the Committee received additional information on the situation of asylum seekers from Mali.

35. **Ms. Candela Quintanilla** (Spain) said that, while work on the new law on equal treatment and non-discrimination had been suspended, it was expected to resume in the next legislative session. The suspension did not mean, however, that the Spanish Government had ceased to take action to combat discrimination, as was evident from the amendments to the Criminal Code and other legislative measures.

36. **Ms. Gómez López** (Spain) said that the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance provided a framework for the development of long-term plans and mechanisms that would vary over time to meet the changing needs of Spanish society. A report on the results of the Human Rights Plan of 2009 had been submitted to the parliament in December 2012, following which the Centre

for Political and Constitutional Studies had been mandated to undertake consultations on the development of a new plan. Ministries had designated focal points for recommendations regarding next steps. The working group on the new plan had completed a draft, which would be reviewed during the next legislative session.

37. **Mr. Aya Onsalo** (Spain) said that a protocol for the treatment of unaccompanied minors existed. All government institutions were required to determine and verify the age of a minor on the basis of the documentation available; if that documentation was insufficient, a medical examination could be performed to determine the person's age upon request by a judge or prosecutor. However, the individual must consent to a medical examination.

38. **Mr. Machimbarrena Cuerda** (Spain) said that it was difficult to assess the results of programmes designed to assist the Gypsy population as there was no accurate census of that population and the various programmes covered a wide variety of areas and objectives. Moreover, thorough analysis of the results of programmes was costly. Nevertheless, the Government intended to carry out an evaluation of the impact of the Strategy for the Social Inclusion of the Gypsy Population in June 2016. The evaluation would cover the period from the Strategy's launch in 2010 to the end of 2015.

39. As for reports that Gypsies felt that their situation had worsened, he suggested that the main problem was a lack of jobs, a problem not unique to the Gypsy population; the economic crisis had significantly reduced employment opportunities for the entire population. Despite the crisis, however, the Government had largely maintained its assistance programmes for the Gypsy population in the conviction that it would be even more costly to society to reduce or eliminate them.

40. **Ms. Sepúlveda García de la Torre** (Spain) said that the deaths near El Tarajal beach had been investigated by the Spanish judicial authorities, despite the fact that it had not been clear whether they had occurred in Spanish or Moroccan waters. Forensic examinations had shown that the deaths of the migrants had been caused by drowning, not by the rubber bullets fired by the Civil Guard, who had not fired at persons in the water but at persons on the beach who were attempting to flee. Under Spanish law, the only possible offences with which the officers could be charged were homicide or murder. The case was still pending review by the Provincial Court of Cadiz and the investigation could therefore potentially be reopened.

41. **Ms. Shepherd** enquired to what extent the State party's efforts to use education to eliminate stereotypes and barriers for persons of African descent had proved effective. She also wondered whether the State party had made an effort to engage Afro-descendants in Spain in dialogue on the legacy of colonization and its current manifestations. She welcomed the State party's efforts to honour the victims of slavery and the transatlantic slave trade, but would like to know whether there were any measures to ensure access to justice and reparations for Spanish citizens of African descent. She would welcome more information on activities to increase awareness of the culture and experiences of persons of African descent and on how such persons viewed the issue of integration. For example, did they feel that integration would imply a loss of their culture and identity?

42. **Mr. Khalaf** said that he was pleased to learn that foreigners had the same right as citizens to invoke the *amparo* procedure in cases involving discrimination. He remained curious about the State party's policy with regard to ethnic or religious groups at risk of disappearing. Were such groups allowed to live together as a community? He recognized that the State party could not allow migrants to enter its territory without any controls whatsoever, but was concerned that persons seeking international protection were being turned away even before they reached the border. A balance must be found between the need to ensure secure borders and the need to assist the increasing flows of migrants and

prevent further human tragedy. The current extraordinary situation called for extraordinary measures.

43. **Mr. López Soto** (Spain) said that the plan for coexistence was one of the instruments being used in the education sector to combat discrimination. Spanish laws relating to education prohibited discrimination on the basis of gender, religion or race. There was considerable diversity in the school population: on average across Spain, 8.8 per cent of children in schools were foreigners, and in some areas the proportion was over 14 per cent.

44. **Ms. Camy Gavilanes** (Spain) said that the aim of the State party's migration regulations for Ceuta and Melilla was to promote legal migration and prevent illegal entry. Significant financial and human resources had been allocated to the border facilities for that purpose. The intention was to ensure the security of national borders while also meeting the needs of migrants and discouraging them from turning to illegal means that could put their lives at risk. Various legal means of entry existed: migrants could apply for asylum at the border, but some could also apply for entry permits under bilateral labour agreements.

45. **Mr. Cereceda Fernández-Oruña** (Spain) said that extraordinary measures had been adopted to deal with the current migrant situation. The budget of the Office for Asylum and Refugees had doubled and 94 new staff had been hired. In addition significant military, patrol and rescue resources had been deployed, including aircraft and ships, to patrol the sea lanes and intercept and rescue migrants at risk of dying in coastal waters. Spain cooperated with other countries, for example Italy and Mauritania, with a view to discouraging migrants from attempting to reach Spain by sea.

46. **Ms. Minguito Gil** (Spain) said that unfortunately international law did not currently provide for any mechanisms affording international protection to an ethnic or racial group as a whole. The right to seek asylum was an individual, not a collective, right. Spain was implementing exceptional measures of relocation and resettlement that were part of the common migration policy adopted by the European Union to address the current crisis. European efforts to address migration focused on reducing the incentives for illegal immigration, managing borders and ports of entry, and adopting a common policy on legal immigration and asylum.

47. **Mr. Cali Tzay** said that Spain should speed up the adoption of its national action plan to ensure compliance with the Guiding Principles on Business and Human Rights, so that incidents such as those he had referred to in the previous meeting would not be repeated. He had understood the delegation to say that the Roma community's loss of their language had contributed to their integration in Spanish society; if that was true, it would appear to be the result of a policy of assimilation rather than of integration. The State party was to be commended for its efforts to combat discrimination through education and for addressing in its school curricula the historical role that some European countries had played in colonialism and slavery. However, the role of Spain in that regard should be further highlighted in Spanish history textbooks.

48. While welcoming the information on the principle of equal treatment in Spanish law, he wished to know more about how that principle was implemented in practice with respect to migrants. Was it true, for example, that only emergency health care was provided in migrant holding centres and that a lack of treatment for chronic illnesses had resulted in deaths in those centres?

49. He was pleased to learn that foreigners could not be detained for identity checks for more than six hours. However, while that was a step in the right direction, the persons brought in for identification often felt humiliated and powerless and perceived that they had been singled out for identity checks on the basis of racial profiling. He would like clarification regarding the length of the waiting period that must elapse before foreigners

could apply for Spanish citizenship. It seemed that some foreigners were eligible for citizenship after as little as 2 years, while persons of African origin might have to wait for 10 years and must hold a valid work permit.

50. **Ms. Mohamed** asked what specific measures were being taken to address hate speech and acts of violence based on racial discrimination, particularly in schools.

51. **Mr. Machimbarrena Cuerda** (Spain) said that the assimilation of the Roma had first begun with their arrival in Spain in the fifteenth century. The language currently spoken by the Roma community was essentially a dialect of Spanish with words and phrases borrowed from Romani. At the first World Romani Congress, held in 1971, members of the Roma community in Spain had realized that theirs was the only community unable to communicate with other Roma in Europe. That realization had led to a growing interest in the use of Romani as a lingua franca, and efforts were under way to revive the language.

52. **Mr. Cereceda Fernández-Oruña** (Spain) said that there had been one death at a migrant holding centre, in 2011. The person had died of meningitis, which was a fairly rare disease, and the death had been an isolated event that would have been difficult to prevent. While the health conditions in the centres at that time might not have been ideal, efforts had been made since then to remedy any shortcomings.

53. In an isolated event that had occurred in 2006, police officers responsible for security at a migrant holding centre had been accused of having sexual relations with residents of the centre. Charges had been brought against the officers, and in 2015 they had stood trial and been acquitted. In his Government's view, the complaints filed had been duly addressed, and all necessary protection measures were in place. Criminal proceedings against law enforcement officials automatically led to parallel administrative proceedings for improper treatment of persons in their care. Administrative penalties ranged from 3 months' suspension to dismissal.

54. The number of foreigners brought to police facilities for identification had decreased significantly in 2015. Such persons were not detained; they were merely required to wait until the administrative procedures had been completed. They were given a document that explained the reasons for the identity check and listed the names of the officers involved. The Ministry of the Interior was currently developing a computerized system that would systematize the data collected and forward it to the Public Prosecution Service where appropriate.

55. **Ms. Minguito Gil** (Spain) said that the temporary migrant reception centres served as initial points of contact for migrants and, as such, provided basic social services, including health care. Such services were not limited to emergency care; they also included initial medical check-ups upon admission, any necessary treatment for illnesses and preventive care to prevent the spread of infections. When necessary, migrants were referred to a local hospital. Health-care professionals were available for medical consultations eight hours per day, with priority given to children and pregnant and breastfeeding women.

56. **Ms. Camy Gavilanes** (Spain) said that one means of obtaining Spanish nationality was to establish residency in the country. While applicants were generally required to have resided in the country for 10 years, that requirement was reduced to 5 years for refugees and 2 years for nationals of countries that had strong historical, linguistic and cultural ties to Spain.

57. **Mr. López Soto** (Spain) said that measures to prevent harassment and violence against ethnic minorities were included in the plan for peaceful coexistence in schools, which comprised three pillars: training for teachers and other school staff, coordination among school authorities and other bodies, and prevention and monitoring of bullying and

abuse and support for victims. Schools had adopted protocols based on those three pillars. A web portal had been set up to disseminate information about the plan, along with other relevant materials.

58. **The Chair** said that the Committee strongly encouraged the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189). Noting that 20 per cent of the funding received from the European Structural and Investment Funds must be spent on social inclusion initiatives, she invited the State party to provide information in a future report on how those funds were being used in Spain to address racial discrimination.

59. Truancy among Roma students should be treated as a symptom of a greater problem rather than as a problem in itself. There was a need for widespread, appropriate interventions to address discrimination against them in the education system, both in the curriculum and in practice. She encouraged the State party to promote best practices in migration at the European level and to use its influence to make European instruments more effective in protecting human rights.

60. **Mr. Murillo Martínez** (Country Rapporteur) said that, despite the major challenges Spain was facing, it had made great progress towards fulfilling its obligations under the Convention. Spain was a young democracy and was currently at a political crossroads. He hoped that it would be able to further bolster its efforts to address the humanitarian crisis faced by persons seeking international protection in Ceuta and Melilla. It might be appropriate to consider closing some of the migrant holding centres, bearing in mind that some of them were former prisons and did not offer suitable living conditions.

61. Concerning the incident at El Tarajal beach, it was difficult to understand how a case in which video evidence showed misconduct by members of the Civil Guard had not resulted in any legal consequence for those involved. He urged the State party to ensure appropriate judicial oversight so that the case could be properly heard at second instance.

62. While there had been a clear reduction in the use of racial profiling, further efforts were needed. He was concerned that newly adopted legislation would allow for the filing of anonymous complaints accusing individuals of radicalization, which could lead to Islamophobia and discrimination against Muslims.

63. He welcomed the State party's engagement in dialogue about the history of slavery, and he hoped to see further dialogue with persons of African descent in Spain. At the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the then Secretary-General of the United Nations, Kofi Annan, had invited countries that had been involved in the trans-Atlantic slave trade to recognize that phenomenon as a crime against humanity. There was no doubt that the historic legacy of slavery continued to have an impact on persons of African descent, and he welcomed the State party's efforts to give visibility to that aspect of its history in the education system. Those efforts should be further strengthened so as to ensure a more balanced view of history.

64. **Ms. Menéndez** (Spain) said that there was no better way for her Government to demonstrate its political commitment to the Convention than by including in its delegation the persons who were best equipped to explain the measures being taken in the country and to understand the Committee's recommendations. Her Government recognized the right of human rights treaty bodies to interpret their mandate as widely as possible. However, it did not agree with the tendency to reopen or reinterpret the distant past. While it was important to properly educate people about the past in order to ensure a better future, her Government did not support the extension of contemporary concepts and obligations to events that had taken place centuries earlier.

65. **Her delegation was surprised and disappointed that the Committee had not raised the issue of the rights of lesbian, gay, bisexual, transgender and intersex persons during the dialogue. The two recent homophobic attacks in Madrid showed that further work remained to be done to address discrimination against that group, and her delegation hoped to be able to count on the Committee for guidance in that regard.**

66. **The Chair assured the delegation that the Committee was particularly concerned about the intersectionality of racial discrimination and discrimination against lesbian, gay, bisexual, transgender and intersex persons. The Committee would gladly address the issue in its concluding observations.**

The meeting rose at 1.05 p.m.

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Committee on the Elimination of Racial Discrimination

Eighty-ninth session

Summary record of the 2426th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 27 April 2016, at 3 p.m.

Chair: Ms. Crickley

Contents

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined second to fifth periodic reports of Oman

This record is subject to correction.

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The meeting was called to order at 3.15 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined second to fifth periodic reports of Oman (CERD/C/OMN/2-5 and CERD/C/OMN/Q/2-5)

1. *At the invitation of the Chair, the delegation of Oman took places at the Committee table.*

2. **Mr. Al Hadrami** (Oman), introducing his country's combined second to fifth periodic reports (CERD/C/OMN/2-5), said that the Government of Oman attached great importance to the fight against racial discrimination and was committed to working with the Committee to ensure the effective implementation of the Convention. The combined periodic reports had been prepared by a working group set up by the Council of Ministers which comprised representatives of a number of government ministries, the Office of the Public Prosecutor, the National Human Rights Commission and civil society. The working group was responsible for compiling and reviewing the information provided by government ministries and non-governmental organizations (NGOs) as part of the reporting process and in response to the Committee's previous concluding observations. It was also tasked with reviewing developments in domestic and human rights law, including laws and measures aimed at eliminating racial discrimination. In preparing the reports, the working group had taken account of the recommendations and guidance on national reporting that had emerged from international conferences on that subject.

3. The reports had been reviewed several times, including by civil society, to ensure that the comments and observations of all stakeholders were accurately reflected therein. A seminar held at the Sultan Qaboos University in March 2016 under the auspices of the National Human Rights Commission had provided an opportunity for academics, students and civil society representatives to discuss the content of the reports and to raise public awareness of the Convention, as the event had coincided with the International Day for the Elimination of Racial Discrimination and had thus received considerable media coverage.

4. As to the country's legal and institutional frameworks for the promotion and protection of human rights, attention should be drawn to the Basic Law of the State, the National Human Rights Commission and the National Committee for Combating Human Trafficking. The international human rights instruments ratified by Oman had been incorporated into the domestic legal framework and the relevant domestic laws had been brought into line with their provisions. In the event of any conflict between domestic law and such instruments, the latter prevailed.

5. To date, Oman had ratified four core international human rights instruments, namely the Convention on the Rights of the Child and the two Optional Protocols thereto; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of Persons with Disabilities. The Government of Oman was continuing to examine the possibility of ratifying other international human rights instruments and of withdrawing its reservations to some of the instruments that it had already ratified.

6. In recent years, the Government of Oman had prioritized human development and had made considerable progress in realizing economic, social and cultural rights, particularly those relating to women, children, health and education, as attested by the *Human Development Report 2010*. The significant progress achieved by Oman in terms of human development was attributable to expeditious reforms carried out in the health and education sectors. Under the Basic Law of the State, health care was available free of

charge to all citizens and to foreign nationals working in the public sector. Residents working in the private sector also had access to health services. The Government of Oman prided itself on its efficient delivery of health-care services and funded over 80 per cent of the total expenditure on health care. Oman also remained one of the leading countries in the field of investment facilitation and had recently adopted new measures to encourage foreign investment in the country.

7. In Oman, education was free of charge until the end of the secondary cycle. The number of State and private schools had grown considerably over the previous few decades, as had the higher education enrolment rate. The Government of Oman was constantly working to improve the country's education system and had succeeded in significantly raising literacy rates. In 2010, 35 per cent of government expenditure had been allocated to the education sector.

8. Raising awareness of racial discrimination in the education sector was an ongoing process. Schools and universities had a duty to sensitize their students to that phenomenon. Human rights concepts, values and principles were gradually being incorporated into curricula at all levels, on the basis of a guide prepared by the Ministry of Education. The Ministry was also responsible for raising all children's awareness of human rights and, to that end, had produced a special booklet intended for primary school children.

9. With regard to employment, the Basic Law of the State enshrined the right and freedom of all citizens to engage in the work of their choice and prohibited forced labour. Furthermore, the Civil Service Code conferred equal rights and duties on all those holding public office, whether Omani or non-Omani, male or female. Omani law prohibited the recruitment of non-Omani workers without a permit from the Ministry of Manpower, required a legal employment contract to be drawn up, showing the name and address of the employer and information about the worker, such as his or her nationality and terms of employment; and guaranteed the right of migrant workers to move about freely and change occupation.

10. The Ministry of Manpower conducted periodic unscheduled inspections to monitor employers' compliance with labour standards and to ensure that migrant workers' rights were being respected. The Omani Labour Code laid down the conditions governing leave in the private sector and maternity leave, and regulated general working conditions, such as the duration of a working day, the payment of overtime and occupational safety and health. The Labour Code had been amended in 2006 to allow private sector workers to establish trade unions and workers' federations in accordance with international labour standards. In Oman, workers could exercise the right to strike and engage in collective bargaining in accordance with Omani law.

11. With reference to gender equality, the school enrolment rate of girls had reached 50 per cent and women accounted for 55 per cent of university students and around 43 per cent of civil servants. Women had the right to vote and to stand as candidates for the legislative assembly and could apply to hold government office on an equal footing with men. Moreover, the high education rate among women, the rise in the median age of marriage and an increase in birth spacing had led to a drop in the country's birth rate.

12. To ensure respect for children's rights, the Government of Oman had set up a national committee tasked with overseeing and monitoring the implementation of the Convention on the Rights of the Child and the Optional Protocols thereto.

13. The Basic Law of the State guaranteed freedom of opinion and expression and freedom of the press, and the right to form associations. Under the amended Press and Publication Act and the Private Radio and Television Companies Act, persons in the private sector were entitled to set up newspapers and publishing houses and establish and operate radio and television companies. The Public Authority for Radio and Television, which was

an independent, private legal entity, had been established in 2010. The Omani Journalists' Association had been established in November 2004 with the aim of promoting and protecting freedom of thought and expression.

14. Following the entry into force of the Convention on the Rights of Persons with Disabilities, the Government of Oman had tasked the relevant institutions with overseeing and monitoring its implementation. Omani law guaranteed persons with disabilities access to all professions and afforded children with disabilities special protection. The Omani courts and the Criminal Code offered protection to the most vulnerable segments of Omani society. It should also be noted that new mediation and conciliation tools had been made available to the parties to legal proceedings.

15. The Government's efforts to disseminate information on the provisions of the Convention included publishing the text of the instrument in its entirety in the Official Gazette; organizing seminars in cooperation with international organizations; and making the Convention the subject of television and radio programmes. The National Human Rights Commission also played an important role in raising awareness of the substantive provisions of the Convention.

16. **Mr. Bossuyt** (Country Rapporteur), noting that a working group had been set up to prepare the State party's report, said that the State party might wish to take advantage of technical assistance from the Office of the High Commissioner for Human Rights (OHCHR) in order to set up a standing body to take charge of reporting to the United Nations treaty bodies and following up on concluding observations.

17. Notwithstanding the Committee's previous requests for data on the ethnic make-up of the country's population and the enjoyment of economic, social and cultural rights by the various social groups, the report contained no such data. Indeed, the State party had reiterated its position that applying the term "ethnic" to a particular social group would constitute racial discrimination, and that all citizens lived together in Omani society without discrimination.

18. Referring to paragraph 99 of the report, he noted that the State party took the view that the word "origin", used in the Basic Law, was synonymous with the word "race". The State party further asserted that there was no racial discrimination in Oman and therefore no definition of racial discrimination. He wondered how the State party could claim that there was no racial discrimination if it was not defined in law.

19. The Committee would welcome more information on the legislative measures taken to implement article 4 of the Convention, including the prohibition of organizations that promoted or incited racial discrimination, and on examples of court cases in which the Convention had been invoked or applied. It would also welcome information on progress in establishing an independent national human rights institution in line with the Paris Principles. According to reports, the National Human Rights Commission lacked independence and was subject to executive interference.

20. He requested information on the participation of minorities in public life and their representation in parliament, including statistical data on members of minority groups employed at all levels in public bodies, institutions and the administration. There was no information in the report on the ethnic make-up of the State Council, the Shura Council or the judiciary. He would also like detailed information on the situation of descendants of servant tribes and former slaves. According to reports, members of the Al Tawayya and Al Khalifayn tribes continued to suffer adverse economic and social consequences following a Ministry of the Interior decision to affiliate them to the Al Harithi tribe, which had effectively made them servants of that tribe. He would also welcome information on any affirmative action measures to prevent discrimination against those groups in the area of

employment. Descendants of former slaves or servant tribes were allegedly victims of discrimination and were more likely to be hired to perform low-paid jobs.

21. The Committee would welcome information on measures to abolish the sponsorship (*kafala*) system, which persisted despite recommendations from various international bodies, and to guarantee migrant workers all Convention rights, in particular freedom of movement and the right to free choice of employment. It would appreciate information on the impact of measures taken to prevent abuse of migrant workers by employers and agencies. What steps had been taken to extend freedoms and rights under the Basic Law to non-citizens?

22. One positive development was that the new nationality law allowed Omani women to transmit their nationality to their children. However, that was only possible under strict conditions; moreover, the new requirements for naturalization were more stringent for women than for men, and included the requirement to have had a male child with the Omani husband. Such differences of legal treatment between men and women were discriminatory and should be eliminated. Another matter of concern was the new provision authorizing revocation of the citizenship of persons whose associations could endanger the interests of Oman; that could lead to persons becoming stateless for exercising their freedom of expression, assembly or association. He would welcome further information on the new law.

23. Noting that all non-citizens, including asylum seekers and refugees, were covered by general immigration legislation, he asked what measures had been taken to develop a specific legal framework for asylum seekers and refugees. More effective measures to combat trafficking in persons would be welcome.

24. He noted with satisfaction that free health care was available to all Omanis and foreigners working in the public sector and that, in the private sector, employers bore the cost of health care for migrant workers. The Labour Code imposed limits on working hours and provided for protection against adverse working conditions. Employers were no longer permitted to retain migrant workers' passports.

25. Referring to the figures given in paragraph 39 of the State party's report, he asked whether it was correct to infer that there were nearly five times more foreign workers than Omani workers. He also wondered how to interpret the difference of a quarter of a million between the figure given in paragraph 128 for the total number of expatriate workers and the figure given in paragraph 39 for the number of expatriates with a work permit. Referring to paragraph 130 of the report, he requested more information about the outcome of the 5 per cent of labour complaints that were referred to a tribunal.

26. The situation of domestic workers was a matter of concern; it would appear advisable to extend the protection of the Labour Code to those workers. Referring to information received about an "Omanization plan", launched in 1988, he said that he would like to know more about its objectives, how it was being implemented and with what results. Was it true that many migrant workers were at risk of losing their jobs?

27. He would appreciate information about the content of the memorandums of understanding on labour signed with various countries, and whether they varied depending on the country concerned.

28. Mr. Avtonomov asked whether the State party was considering ratifying the amendment to article 8 of the Convention. Noting that the Convention had been incorporated into the State party's legal order, he wondered whether the Convention, and in particular its definition of racial discrimination, had been enforced or invoked in any domestic court proceedings.

29. The ongoing hostilities in Yemen raised the question whether Oman hosted refugees from that or any other country. If so, what were their living conditions? Given the number of foreign domestic workers in Oman, he would like to know whether the State party had ratified the ILO Domestic Workers Convention, 2011 (No. 189).

30. Did the State party have any relationship with the Independent Permanent Human Rights Commission of the Organization of Islamic Cooperation (OIC)? Noting that Oman had not ratified the Arab Charter on Human Rights, he wondered what the State party's attitude to that instrument was.

31. **Mr. Yeung Sik Yuen** asked whether or not the *kafala* system was covered by the Labour Code. If it was not, should he assume that the hotline for complaints under the Labour Code mentioned in paragraph 83 of the report would not deal with complaints concerning *kafala*? Referring to paragraph 57, he said that he would appreciate further details on the number of beneficiaries of the social security system and the amounts received.

32. With regard to the administration of justice and the independence of the judiciary, he requested information on the subject matter of the royal decrees referred to in paragraph 86 of the report. The report stated that the judiciary was separate from the executive, yet the Sultan was both the head of the executive and the head of the Supreme Judicial Council, which would seem to contradict that statement. He would appreciate the delegation's comments. He also wished to know who had conducted the assessment referred to in paragraph 87, which had given Oman a high global rating in terms of judicial impartiality and independence.

33. He wondered whether the 33 mediation and conciliation committees referred to in paragraph 89 were ad hoc bodies, each set up for a separate dispute, or standing bodies. If they were standing committees, why were 33 necessary?

34. Was capital punishment applied in Oman? If so, for what offences? What category of person was most likely to receive the death sentence — was it mainly applied to migrants?

35. The United States Department of State report mentioned in paragraph 208 had found that there was "generally free practice of religion but within defined parameters". He would like to know what those parameters were. Was it a criminal offence in Oman to convert from Islam to another religion, as it was in certain other Muslim countries?

36. As to the freedom of opinion and expression, he noted that the report quoted the Sultan as declaring in 2000, "... we will never allow anyone to stifle thought". The question, however, was not what went on in a person's mind but what would happen to that person if those thoughts were expressed in words. Only then could the degree of freedom be assessed.

37. **Mr. Murillo Martínez** commended the State party for observing the International Day for the Elimination of Racial Discrimination. Welcoming the progress made in eliminating discrimination against women, he asked about the reasons for the considerable disparity between the proportion of women employed in the public and the private sector, which stood at 43 per cent and 20 per cent, respectively. He would be interested to know what measures had been taken or were planned to implement the recommendation made during the 2011 universal periodic review that the State party should strengthen efforts to combat inequality faced by women in such areas as divorce, inheritance and child custody.

38. He wondered what progress had been made in implementing the recommendation concerning the elimination of discrimination against persons with disabilities and the education of children with disabilities. He would be interested to know what proportion of the migrant population was of African descent and what activities were planned to mark the International Decade for People of African Descent.

39. **Ms. Shepherd** said that Oman had made commendable efforts in the area of education. She would be interested to know more about the results of the educational programme for social studies and other subjects such as Arabic reading and Islamic studies, which included human rights concepts and concepts relating to peace, openness to other civilizations, acceptance of differences and cultural diversity, and whether it was meeting expectations in terms of the elimination of racial discrimination. She would welcome clarification of which "other civilizations" were covered in the curriculum. Noting that article 17 of the Basic Law referred to non-discrimination on the ground of colour in addition to various other grounds, she wondered who would be covered by that provision.

40. **Mr. Kemal** said that it was to be hoped that the interactive dialogue would give the State party's authorities a deeper understanding of the Convention and the areas that required further attention. It was important to recognize that racial discrimination took many different forms, and the social and historical factors that could give rise to such discrimination needed to be identified.

41. The Committee would be grateful for statistics, as requested in the list of themes, on the descendants of servant tribes and of former slaves. Discrimination against non-citizens, including migrants, was a problem that required immediate attention. While the recruitment of migrant workers had a positive impact on both the Omani economy and that of the sending countries, the *kafala* sponsorship system should be reviewed, as it adversely affected the rights of migrant workers. The lack of freedom of movement for migrant workers was also a serious concern. The Government should take more active measures to prevent the abuse and exploitation of migrant workers by unscrupulous employers. He wondered whether the Government had any plans to review its citizenship laws to facilitate access to citizenship for children born to an Omani mother and a foreign father.

42. **Mr. Marugán** said that the delegation should provide updated information on the appointment of labour inspectors since 2009, the total number of inspectors in the State party, the number of inspectors for the public sector, and whether there were any foreign inspectors. He would be interested to hear more about the content and outcome of the Decent Work Country Programme organized in collaboration with the International Labour Organization. He wished to know the proportion of Omani and non-Omani domestic workers and any differences in regulatory protection for the two groups. How many of the complaints lodged by workers were in relation to domestic work?

43. Noting that none of the complaints submitted by workers in 2010 had involved discrimination, he wondered how discrimination was defined and why there were no complaints of that nature. He requested details on the number and kinds of complaints concerning the Labour Code and the implementing regulations concerning domestic servants and foreign workers registered through the 24-hour hotline service and what follow-up action had been taken. He wondered whether there had been any campaigns to raise public awareness of the benefits of cultural diversity and the contribution of migrant workers and would welcome further information on media efforts to promote awareness of racial discrimination.

44. **Ms. Mohamed** said that she would welcome further information on the employment agencies operating in Oman that recruited foreign workers, including minors. Were they officially recognized and was there a law governing their activities? Was there any monitoring in place to prevent the recruitment of minors?

45. **Mr. Khalaf** said that he would be grateful for specific information on the kinds and number of civil society organizations operating in Oman and their activities. Noting with satisfaction that the Convention had been incorporated into national legislation, he wondered how exactly that had been achieved. Specifically, how had the definition contained in article 1 of the Convention and the requirements of article 4 on punishment

been incorporated into domestic law? He would welcome clarification of how the legal framework was organized and the different mandates of the Consultative Council and the State Council. In particular, he wished to know which body was responsible for the proposal, promulgation and amendment of legislation on racial discrimination, including the harmonization of laws with the Convention. He would be interested to hear of any court cases in which the Convention had been invoked or had taken precedence over the provisions of national legislation. While the establishment of the National Human Rights Commission was to be welcomed, it was essential that it be given full financial and moral independence so as to comply with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). He would be interested to hear more about the mandate and field of action of the Commission.

46. He expressed concern that domestic workers did not come under the scope of the Labour Code, could have their passports withheld, were at risk of sexual abuse, and were unable to change employers, which meant that, for all intents and purposes, they were under a *kafala* system, which was incompatible with human rights principles and international conventions. Measures must be taken to provide domestic workers with the necessary protection. He wondered whether domestic workers had the right to establish their own trade unions and whether Royal Decree No. 74/2006 was part of the legal framework governing domestic work. He would be interested to hear more about freedom of the press and regulations on censorship. Did the freedom to form associations also apply to the establishment of political parties?

47. **Mr. Lindgren Alves** said that he was impressed by the many positive developments in the social and economic fields referred to in the State party's report. However, it was surprising that the State party had not ratified either of the two main human rights treaties, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Did it plan to do so in the near future? On the subject of freedom of religion, was it possible to be an atheist in the State party?

48. The State party had not provided data on the ethnic composition of the population in its report and had asserted that its population was ethnically homogenous. It was difficult to imagine, however, that the population of a State with more than 3 million inhabitants comprised only one ethnic category. Did the State party recognize the existence of different tribes or of groups who might form communities separate from the rest of the population? Were other religions practised in the State party, apart from Islam?

49. **Mr. Calí Tzay** said that the State party's report was well structured and provided a good overview of the situation regarding racial discrimination. However, the Committee would like to know more about the salaries of foreign workers, in particular whether they received the same level of pay as Omani workers occupying the same position and having the same skills. The lack of judicial complaints of racial discrimination should not necessarily be interpreted as meaning that there was an absence of racial discrimination in the State party. In some States there was a lack of trust in the judicial system or in the Government, which was responsible for reluctance to submit such complaints. In accordance with the Committee's general recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, it was important for the Committee to have information on complaints of racial discrimination before the courts, the better to be able to monitor the situation and support the State party in implementing the provisions of the Convention.

50. **Ms. McDougall**, associating herself with the comments made and questions asked by her colleagues, said that the Committee would appreciate more information on the national origins of foreigners employed as domestic workers in the State party.

51. **Ms. Li Yanduan** said that it was clear from the State party's report that progress had been achieved in implementing the Convention. More information would, nonetheless, be appreciated on how many migrant workers were living in the territory of the State party without a legal permit and on how those workers were treated by the Government. Was the approach to migrant workers governed by a specific policy?

52. **Ms. Dah** said that the State party was to be commended for having agreed to withdraw its reservations to a number of international human rights instruments, and noted that it was also considering withdrawing its reservations to the Convention on the Elimination of All Forms of Discrimination against Women. In paragraph 36 of the core document (HRI/CORE/OMN/2013) it was stated that Oman hoped to accede to a number of international human rights instruments in the near future. Was it possible to clarify whether that would be the case within the next two years?

53. On the subject of women's rights, in paragraph 81 of the core document it was stated that the Civil Service Act No. 8/80 provided that a woman was entitled to leave from her employment to accompany her spouse for a period of up to two years. In the reverse situation, were men entitled to the same type of leave? If not, would the State party consider amending the Act to introduce such a provision?

54. **The Chair**, echoing the remarks of the Country Rapporteur, said that the Committee would appreciate further clarification on the situation regarding the descendants of servant tribes and slaves. Migrant workers were non-citizens and thus among the most vulnerable sectors of the population; the Committee would therefore like to know more about the involvement of organizations representing migrant workers in drafting the State party's report. Would the State party consider focusing on awareness-raising among that group in light of the outcome of the dialogue with the Committee? Was further information available on the progress of women who belonged to minorities, another of the most vulnerable population groups in the State party?

55. **Mr. Al Hadrami** (Oman) said that the Government of Oman did its utmost to protect and promote human rights, through the implementation of the Convention and other instruments. On the subject of gender equality, it should be noted that two members of the delegation, one male and one female, had both travelled to attend the Committee's current session without their spouses. There was therefore no gender-based discrimination in such circumstances.

56. **Mr. Al Balushi** (Oman) said that Oman welcomed the dialogue with the Committee and would strive to improve its implementation of the Convention and to learn from the comments made by the members of the Committee. The Basic Law of the State was the primary legal instrument in Oman and contained a number of important terms and definitions. In the national legal order, international human rights instruments were given precedence, in accordance with articles 79 and 80 of the Basic Law. There was no definition of ethnicity in the Basic Law because the legal system granted the same civil and political rights to all Omani citizens, regardless of their ethnic origin or religion. The only person in the State who was required to be of Omani ethnic origin and descent was the Sultan. There was therefore no discrimination against any minorities.

57. The National Human Rights Commission had not applied for membership of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, but there was direct communication between the two bodies.

58. Statistics were not available on the number of women who were members of the State Council. However, in 2015 more than 20 per cent of the members appointed to the Shura Council had been women. There was no quota for the representation of women on the State Council and so the number varied from year to year. The elected Shura Council

had greater powers than the State Council, including monitoring powers. The State Council had only legislative and consultative powers.

59. **Mr. Al Rahbi** (Oman) said that there was an ongoing participatory process involving all stakeholders, to consider ratification of the two international human rights covenants as well as several other international human rights instruments. It was expected that there would be positive developments in that respect in the near future. On the subject of freedom of association and assembly, Oman had expressed its willingness to implement the majority of the recommendations made by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, during his visit to Oman. In certain areas, nonetheless, the Government considered that the Special Rapporteur might have exceeded his mandate and therefore expressed its disagreement with some of his recommendations.

The meeting rose at 5.55 p.m.

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Committee on the Elimination of Racial Discrimination
Eighty-ninth session

Summary record of the 2427th meeting
Held at the Palais Wilson, Geneva, on Thursday, 28 April 2016, at 10 a.m.

Chair: Ms. Crickley

Contents

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

***Combined second to fifth periodic reports of Oman* (continued)**

This record is subject to correction.

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The meeting was called to order at 10.05 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined second to fifth periodic reports of Oman (continued) (CERD/C/OMN/2-5 and CERD/C/OMN/Q/2-5)

1. *At the invitation of the Chair, the delegation of Oman took places at the Committee table.*

2. **Mr. Al Hadrami** (Oman), referring to the issue of labour disputes, said that complaints were referred to a dispute settlement department so that they could be resolved amicably. If that proved impossible, the complaint was referred to the competent courts. All individuals were entitled by law to appeal against court rulings. The Supreme Court registry recorded all cases of labour disputes, and statistics in that regard would be made available to the Committee.

3. With regard to migrant workers and the sponsorship (*kafala*) system, all foreign workers were free to change occupation. Employers were entitled to retain an employee's passport but it would be returned upon request. The Omani Labour Code satisfied international standards and members of the Government worked with the International Labour Organization (ILO) in implementing ILO conventions.

4. The term "domestic worker" was not used in Oman. Such workers were treated in the same manner as any other employee, irrespective of their nationality. Ministerial decrees had been issued regarding the labour conditions of domestic workers, who were able to file complaints before a court in the event of ill-treatment. Perpetrators of ill-treatment against domestic workers were punishable by law. Offences under the Human Trafficking Act were subject to a term of imprisonment of up to 7 years.

5. All workers had the right to join trade unions irrespective of their nationality, and minimum wage requirements were respected in accordance with the law. Omani and non-Omani workers received equal treatment. However, certain businesses provided foreign workers with housing allowances or study grants. Media campaigns had been launched to raise awareness of labour rights. Statistics on workers, disaggregated by nationality, would be forthcoming. Agencies for the recruitment of foreign workers were regulated by law. The Criminal Code prohibited the recruitment of minors and the minimum legal age of a worker recruited from abroad was 21 years.

6. With regard to the administration of justice, numerous mediation and conciliation committees had been established under the Mediation and Conciliation Act as an alternative dispute settlement method, thereby lightening the caseload of the courts, given that court trials were often lengthy and involved numerous stages. The members of the committees were aware of the social background of the persons involved in the dispute and were well placed to seek a definitive solution. Every province with a court of first instance had a mediation and conciliation committee and a judge from the court presided over the committee's proceedings and validated its rulings. Appeals could be lodged in certain circumstances but no such cases had yet been recorded. Approximately 85 per cent of disputes brought before the committees were resolved through conciliation. Complaints not previously filed in a court could be brought before a committee. If the dispute could not be resolved by the committee, it could be considered by a court of first instance.

7. **Ms. Al Raqishi** (Oman), referring to the question of nationality, said that children in most cases received the nationality of their fathers, and in some cases that of their mothers. In accordance with the Nationality Act, Omani nationality was granted to children with an Omani father even if the mother was not Omani. A child with no recognized father who

was born to an Omani mother was also granted Omani nationality, as were children born in Oman whose fathers were stateless. Children born to an Omani mother and foreign father were treated as Omani with regard to the provision of education and health care. Ministerial decisions had been issued to allow such children to pursue higher education in Oman and to entitle them in certain cases to receive medical care abroad free of charge. There were no recorded cases of statelessness among children in Oman as all children born in Oman to parents of unknown nationality were granted Omani citizenship.

8. Women were able to work in any post within the judiciary and not just within the Office of the Public Prosecutor. Under article 3 of the Interpretation and General Provisions Act No. 3 of 1973, any reference to males in Omani law must also include females. Consequently, women were allowed to apply for the same posts as men and were free to change their position within the judiciary. An increasing number of women were taking up positions in public ministries. The office for the follow-up of the implementation of decisions, one of the most important bodies in the judiciary, was led by a woman. Currently, 39 women worked in the judiciary in various capacities. Women had also been legally permitted to work as prosecutors since 2002.

9. Persons with disabilities were able to apply for all posts within the civil service. Private enterprises must recruit persons with disabilities if the number of employees exceeded 50 persons. In that case, at least 2 per cent of the employees were required by law to be persons with disabilities. A commission on the education of persons with disabilities had been established and three special schools had been set up for such persons. However, a high number of students with disabilities were fully integrated in public schools. Compulsory standards were in place to ensure the accessibility of schools and other public buildings to persons with disabilities. Campaigns had been launched to raise awareness of the needs of such persons and Oman celebrated annually the International Day of Persons with Disabilities as well as World Sight Day. Pursuant to the law, sports and cultural organizations were responsible for promoting the participation of persons with disabilities. Seats were reserved for such persons in public transport and they paid half fare. All government entities cooperated in order to ensure the accessibility of information to persons with disabilities. For instance, sign language training workshops had been held and some programmes were broadcast on television with sign language interpretation.

10. **Mr. Al Balushi** (Oman) said that the Sultanate was increasingly cooperating with the Independent Permanent Human Rights Commission under the Organization of Islamic Cooperation (OIC). The Sultanate had published a brochure on inheritance for women under Islamic sharia in order to clarify any misunderstandings on the issue. The National Human Rights Commission had signed an agreement to publish in a number of United Nations languages a book on human rights in the Islamic world written by a law professor from the University of Cairo. The book compared the content of various international agreements with Islamic sharia and the Commission believed that its publication for a wider audience would clarify a number of points regarding the relationship between Islam and human rights.

11. The death penalty was applied only in cases of murder. The Criminal Code provided for capital punishment in specific cases, such as premeditated murder, murder involving torture and murder of family members. If the family of the victim decided to give up the right to capital punishment, it would not be applied. Moreover, in order for capital punishment to be carried out, judges had to vote unanimously in favour of it and the Grand Mufti of the Sultanate would also have to agree to its use. Capital punishment was not applied to minors or pregnant women. Anyone liable to the death penalty must be provided with legal assistance by the State and, if the individual's rights were not respected in that regard, an appeal could be lodged.

12. Turning to issues relating to personal status, he said that although under sharia law it was generally the husband who could request a divorce, it was possible for the wife to do so if she considered that the marriage could not be saved, in particular if a marriage contract had been entered into by both parties providing for the possibility of divorce at the request of the woman. The law regarding the custody of children in case of divorce had been clarified recently. A judge was required to take into account the best interests of the child, who could for example be asked by the judge to express a preference as to which parent should have custody.

13. A man's share of an inheritance was generally twice as much as that of a woman, but the distribution could vary to take account of the precise circumstances. For example, a brother might inherit twice as much as his sister but be made responsible for paying all household expenses from his share, or a woman relative's share of an inheritance might be larger than that of a more distant male relative. There had also been cases where only the woman relative had received an inheritance.

14. Although the Criminal Code did not specifically define racial discrimination, the courts created jurisprudence in that regard through their decisions. Pursuant to the Basic Law of the State, international treaties, once ratified, had the force of law and the courts could invoke and apply their provisions. The definition of racial discrimination under the Convention was therefore applied in Oman. The Criminal Code severely penalized certain acts involving racial discrimination. Article 130 bis, for example, criminalized incitement to religious or sectarian conflict, the penalty for which could be up to 10 years' imprisonment. Crimes against children and other serious crimes such as human trafficking, which could involve an element of racial discrimination, were also severely penalized. Article 34 of the Criminal Code also criminalized humiliation of a person by means of gestures, speech, writings or images; that provision could be used to punish racial discrimination.

15. With regard to the National Human Rights Commission, he said that it had been established in 2008 and its members had been appointed in 2010. Though funded by the Government, the Commission was entirely independent in allocating its resources and managing its work. It was not answerable to the Executive or to any State institution.

16. **Mr. Bossuyt** (Country Rapporteur) said that the Committee should be provided with information on the outcomes of labour disputes between employers and employees. He requested clarification on whether or not employers of foreign domestic workers could retain those workers' passports, given the reference in paragraph 130 of the State party's report to complaints about that practice, which was theoretically forbidden by law. He wondered why workers should have to ask to have their passports returned and whether employers could refuse such requests. The delegation had stated that the Labour Code made no distinction between workers, irrespective of nationality or gender. If that was true, were domestic workers covered by the Labour Code or only by ministerial decisions, or both?

17. He requested more information on incidents of racial discrimination and the fight against racial discrimination and on citizenship for children born to parents who were not both Omanis. He asked whether a foreign worker who had lawfully resided in Oman for a long period of time had the right to request naturalization. More information should be provided on the number of cases of imposition of the death penalty as well as executions. He asked why the State party had no refugee law and wondered why refugees from countries such as Syria and Afghanistan did not try to enter Oman.

18. **The Chair** said that it should be emphasized that the Committee was seeking detailed information about the practical implementation of the Convention. With regard to the mediation and conciliation committees, for example, she requested information on how the members of those committees were chosen and whether they received any training in

problems related to racial discrimination. With regard to the death penalty, the Committee was likewise particularly interested in knowing whether there were differences in the way it was applied, for example in the case of migrant workers or non-citizens, that might be motivated by racial discrimination.

19. **Mr. Avtonomov** said that he was still unsure whether the Labour Code applied to domestic workers; he would appreciate further clarification of that matter and asked whether the State party intended to ratify the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189). Although the delegation maintained that there was no discrimination between foreign and native domestic workers, he noted that virtually all domestic workers were foreigners. He also asked for information on what school of sharia law was prevalent in Oman.

20. **Mr. Al Hadrami** (Oman) said that the delegation would provide whatever statistics were available to satisfy the Committee's concerns. Employers were not allowed to retain foreign workers' passports. If any employer violated that rule, the employee had the right to file a complaint. He noted in that regard that labour inspectors helped protect workers' rights. He confirmed that foreign workers could apply for naturalization if they met the relevant requirements, which were available for consultation online; some foreign workers had in fact acquired Omani citizenship.

21. Awareness-raising activities about the Convention included courses for the public on its provisions, information on the work of the National Human Rights Commission, university courses dealing with the Convention, manuals prepared by the Ministry of Education and training of judges, prosecutors and lawyers. With regard to the mediation and conciliation committees, he said that a court would generally decide if a dispute before it would lend itself to mediation and the parties could negotiate on an equal footing. If there were problems of interpretation of the law, senior or retired judges and legal experts could be called on to provide advice to the judiciary.

22. **Mr. Al Rahbi** (Oman) said that he understood that the situation of domestic workers might seem opaque but stressed that his Government cooperated closely with the countries of origin of most foreign workers and continued to work to ensure legal protection for them in Omani society. With regard to the death penalty, he said that there had been two executions in 2015, both for blood crimes, in cases where the families of the victims had refused to waive the right to demand the death penalty before sentencing. His Government viewed the situation of migrant workers in terms of fixed-term work contracts between employers and employees. He noted that Oman was a signatory to, and had largely implemented, a number of International Labour Organization conventions.

23. **Mr. Al Balushi** (Oman) said that, with regard to awareness-raising, it was important to remember that racial discrimination was prohibited and punished in the national legal framework, including under various provisions of the Basic Law of the State, the Criminal Code and the Labour Code. He noted that the Criminal Code specifically prohibited slavery; a museum would soon open in Oman that would show Oman's efforts to eliminate and punish human trafficking and slavery.

24. Turning to freedom of expression, he said that article 29 of the Basic Law guaranteed freedom of opinion and expression within the limits of the law, while article 31 guaranteed freedom of the press in accordance with the conditions and circumstances defined by law. Both individuals and the press had a responsibility to avoid inflammatory or insulting actions.

25. **Mr. Al Rahbi** (Oman) said that he had been a newspaper editor in the 1970s and had witnessed the evolution of attitudes towards freedom of expression and the law. The Oman Journalists' Association, established in 2004, worked to strengthen the professional

competence of journalists. He was confident that the laws relating to freedom of expression would continue to reflect changing attitudes.

26. **Ms. Al Raqishi** (Oman) said that pursuant to Circular No. 2/2006 employers were prohibited from retaining the passports of their workers. Article 312 of the Criminal Code had been amended recently to criminalize failure on the part of an employer to return an employee's passport when requested to do so.

27. **Mr. Kut** observed that, according to the responses in the State party's report (paras. 108-111) to recommendations 14 and 15 of the Committee's previous concluding observations, the Basic Law of the State and other legal instruments, for example the Criminal Code, in particular article 130 bis thereof, contained adequate provisions to curb racial discrimination. He pointed out, however, that although paragraph 105 of the State party's report stated that, pursuant to article 76 of the Basic Law, the Convention took precedence over national laws, it also stated that failure to comply with the Convention was a breach of the law entailing criminal responsibility "if the act is considered an offence". Did that mean that if an act was not considered a criminal offence there could be no prosecution? If the courts could not ensure compliance with the Convention, that would make the notion of supremacy of international instruments meaningless.

28. He expressed concern that there might be a reluctance or indifference on the part of the police, prosecutors and judges to investigate and prosecute racial discrimination when that notion and related offences were only vaguely defined. The delegation should reassure the Committee that the Convention was truly being implemented by providing concrete examples of court cases and decisions penalizing racial discrimination. He also urged the State party to fully align its legislation with the language and definitions set out in the Convention, with a view to ensuring its effective implementation.

29. Children born to an Omani woman and a foreign man were discriminated against under national law, in that they did not hold the same right to Omani citizenship as children born to an Omani man and a foreign woman. He asked whether there were any plans to address that discriminatory provision. He wished to know whether the State party planned to make the necessary changes to the National Human Rights Commission so that it could acquire A status accreditation with the International Coordinating Committee of National Human Rights Institutions.

30. Lastly, given that slavery had not been abolished in Oman until 1970, he asked whether any sociological research had been conducted on the situation of former slaves living in the country.

31. **Mr. Yeung Sik Yuen**, noting that domestic workers were not protected under the Labour Code, urged the State party to rectify that situation. He was convinced of the merits of mediation but was concerned that judges and other judicial officials in courts of first instance might not have sufficient knowledge and experience to mediate cases effectively. While noting the information provided in the State party's report concerning quotas for the employment of persons with disabilities, he remained concerned that some persons with disabilities might still be left without work. He therefore asked whether there were any further incentives for employers to hire them, perhaps in the form of a tax rebate.

32. **The Chair** pointed out that the Committee was mainly concerned about the issues of mediation and employment for persons with disabilities as they related to racial discrimination.

33. **Mr. Al Rahbi** (Oman) said that his Government was fully committed to integrating domestic workers into the Labour Code so as to ensure their full protection. He agreed that the dialogue should focus on racial discrimination and noted that the International Labour Organization (ILO) was responsible for monitoring labour-related issues.

34. **The Chair** said that the Committee was in fact very concerned about the situation of domestic workers and that the issue was directly related to the Committee's mandate, as many domestic workers were migrant workers and were therefore at risk of racial discrimination.

35. **Mr. Al Hadrami** (Oman) said that judges received thorough training in mediation skills and that it was hoped that the use of mediation would speed up judicial proceedings and lighten the courts' workload. Further efforts would be made to improve the mediation process, which he believed to be an excellent alternative to resolving disputes in court.

36. **Ms. Al Raqishi** (Oman) said that no taxes were deducted from the salaries of persons with disabilities. In addition, those persons received financial support in the form of monthly grants and other benefits, as well as mobility and other aids to facilitate their participation in daily life. Persons with disabilities working in the private sector received social security benefits on an equal footing with other workers.

37. **Mr. Al Balushi** (Oman) said that article 130 bis of the Criminal Code had been introduced in 2001 to criminalize incitement to hatred or racial discrimination. Following the adoption of counter-terrorism legislation in 2009, the article had been amended to adapt it to the country's current situation. There had been very few cases of incitement of racial hatred.

38. Pursuant to the Basic Law of the State, international conventions to which Oman was a party formed part of the national legal order. Since penalties for violations were set out not in the international conventions but in national legislation, the conventions were incorporated into national laws so that the courts could then apply them through those national laws.

39. During its most recent universal periodic review, Oman had accepted the recommendation that it should amend certain laws so that its National Human Rights Commission could obtain A status accreditation. His Government had cooperated with the Office of the United Nations High Commissioner for Human Rights to bring the National Human Rights Commission into line with the Paris Principles. The Commission should therefore be a candidate for A status.

40. While it was true that the Commission suffered from a lack of qualified human resources, work was under way to provide training to its staff with a view to conducting a range of educational, cultural and social programmes to enhance citizens' awareness of their human rights. Currently, about 30 such programmes were carried out each year.

41. **Ms. Mohamed** commended the State party for its progress in the advancement of women. She asked whether the Government was aware that recruitment agencies and individuals were recruiting minors from various countries to work in Oman, and whether there was a law governing the operations of such agencies. She also wished to know what was the minimum wage in the country.

42. **Mr. Al Rahbi** (Oman) said that recruitment agencies were indeed subject to regulations issued by the Ministry of Manpower. Their operations were monitored in coordination with the embassies of the workers' countries of origin, and thus far there had been no complaints of abuses by those agencies. Legal penalties were in place, however, to punish any abuses that might occur. The minimum monthly wage was set in national legislation and depended on the worker's level of education. A copy of that legislation could be provided in writing.

43. **Mr. Murillo Martínez** said that he would appreciate further information on the specific measures taken to address the problem of human trafficking. He also requested statistical data on the victims' countries of origin.

44. **Mr. Kemal** said that special measures to provide temporary help to the ethnic groups most sorely in need thereof were the responsibility of the State, whereas *zakat* (alms-giving) was an individual obligation in Islam. He asked whether the Government was implementing any such special measures in the country.

45. **Mr. Al Balushi** (Oman) said that *zakat* (alms-giving) and *waqf* (endowments) were regulated by the Ministry of Endowments and Religious Affairs. The name of that Ministry highlighted the fact that a number of different religions were freely practised in Oman. The Ministry collected alms and redistributed them among low-income families, orphans and other needy persons as a form of humanitarian assistance. The donors themselves did not decide who would receive the alms. A decision had been taken to establish a body that would be responsible for redistributing alms both within and outside the country to help people affected by disasters or humanitarian crises.

46. **Mr. Al Balushi** (Oman) said that recruitment agencies could not recruit persons under the age of 21 and could be fined or even closed down if they violated domestic legislation or Ministry of Labour rulings. Agencies in countries of origin that obtained travel documents in which the age of the worker concerned had been falsified were subject to the laws of the country in which they were operating. The Human Trafficking Act had been enacted to address the issue of illegal recruitment agencies carrying out trafficking in persons both in Oman and abroad and provided for specific cooperation with countries of origin in that regard. The National Committee for Combating Human Trafficking had been set up to implement the above-mentioned Act in cooperation with the judicial system.

47. **Mr. Khalaf** asked whether domestic workers enjoyed the right to freedom of association and whether the National Human Rights Commission could really be deemed to be independent, given that it received government funding and reported to the State Council. All of the articles of the Convention must be incorporated into domestic legislation. He asked for clarification of the role of Islamic jurisprudence in relation to the definition of racial discrimination.

48. He asked whether persons wishing to set up civil society organizations faced restrictions in that regard, whether the Government promoted and supported the activities of such organizations, whether there was any domestic legislation in place on displaced persons, whether Oman played host to any refugees from Syria or Yemen and, if so, whether any specific measures had been taken to protect them.

49. **Mr. Marugán** said that, in its 2006 concluding observations addressed to the State party, the Committee had pointed out that the mere absence of complaints and legal action by victims of racial discrimination might be mainly an indication of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute. The Committee had requested the State party to inform the public about all legal remedies in the field of racial discrimination. He asked whether it was possible that victims of racial discrimination did not lodge complaints owing to fear of reprisals, language difficulties or a lack of awareness of what actually constituted a punishable offence. He further asked what had been done to facilitate the filing of complaints of racial discrimination, what training on the Convention and relevant domestic legislation was provided to public prosecutors, the police and judicial officials and what measures had been taken to establish cooperation with NGOs working with victims of racial discrimination.

50. Further data on the number of trafficking victims identified and the number of cases of trafficking dealt with would be welcome. He asked for additional information on the payment of allowances under the Social Security Act to foreign nationals who had no source of income.

51. **Mr. Al Rahbi** (Oman) said that a number of Syrian refugees had entered the country and that Syrian nationals legally resident in Oman had the right to bring their families to join them. To date, there had been no influx of displaced persons from Yemen; however, the Government stood ready to provide assistance in that regard. Labour relations between employers and foreign nationals were regulated by domestic legislation.

52. **Mr. Al Hadrami** (Oman) said that nothing in the Labour Code prevented workers from exercising the right to freedom of association.

53. **Mr. Al Balushi** (Oman) said that trade union organizations did not distinguish between domestic and other workers and that all workers enjoyed the same rights in that regard. The establishment of civil society organizations was regulated by law. There were more than 170 such organizations in the country and they received funding and support from the Government.

54. **The Chair** asked whether foreign nationals could also join civil society organizations.

55. **Mr. Al Balushi** (Oman) said that foreign nationals could join civil society organizations and could vote in the internal elections of those bodies. Although it was funded by the Government, the National Human Rights Commission was completely independent. The jurisprudence created by the courts regarding the definition of racial discrimination was secular in nature.

56. **The Chair** said that the delegation had not provided answers to questions on welfare payments to foreign nationals and the abolition of slavery and the living conditions of former slaves.

57. **Ms. Shepherd** asked whether there were any people of African descent living in Oman, whether it was planned to implement any activities in the context of the International Decade for People of African Descent and whether efforts to combat stereotypes and discrimination had united the population around common values and helped to ensure respect for the inherent dignity and human rights of Omani citizens and foreign nationals.

58. **Ms. Mohamed** said that the Omani authorities should look closely into the activities of recruitment agencies and the involvement in those activities of foreign embassies and influential private individuals.

59. **Mr. Al Hadrami** (Oman) said that, in addition to historical attempts to eliminate slavery, articles 260 and 261 of the 1974 Criminal Code had criminalized the practice and it had been stamped out in Oman. Information on efforts to combat trafficking in persons could be found on the website of the National Committee for Combating Human Trafficking. There were many Omani nationals of African or Asian descent.

60. **Ms. Al Raqishi** (Oman) said that, in 2014, 18 cases of trafficking in persons had come before the courts, most of which had been resolved in 2015.

61. **Mr. Bossuyt** (Country Rapporteur) said that the exchange with the delegation of Oman had been a fruitful one and asked for information to be provided in writing on the requirements that must be met by migrant workers applying for Omani citizenship, the length of time they must have been resident in Oman and the number of such workers who obtained citizenship. Information on the number of Omani, foreign and domestic workers belonging to trade union organizations would also be welcome.

62. **Mr. Al Hadrami** (Oman) thanked the Committee members for their questions and comments.

63. **The Chair** thanked the delegation of Oman for its participation in the interactive dialogue with the Committee.

The meeting rose at 1 p.m.

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Eighty-ninth session

Summary record of the 2428th meeting
Held at the Palais Wilson, Geneva, on Thursday, 28 April 2016, at 3 p.m.

Chair: Ms. Crickley

Contents

Consideration of reports submitted by States parties under article 9 of the Convention (*continued*)

Combined eighteenth to twentieth periodic reports of Rwanda

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 9 of the Convention (*continued*)

Combined eighteenth to twentieth periodic reports of Rwanda (CERD/C/RWA/18-20, CERD/C/RWA/Q/18-20)

1. *At the invitation of the Chair, the delegation of Rwanda took places at the Committee table.*

2. **Mr. Ngarambe** (Rwanda), introducing the combined eighteenth to twentieth periodic reports of Rwanda (CERD/C/RWA/18-20), said that modern Rwanda was a country with a political culture that valued diversity of views and consensus-building; that culture was underpinned by a system of laws and institutions that guaranteed justice for all. Rwandans were active participants in the implementation of programmes that impacted on their lives.

3. Institutionalized discrimination against the Tutsi people was part of the collective memory of all Rwandans. No one had ever been prosecuted for any of the offences committed against the Tutsi people in past decades, including the 1994 genocide; on the contrary, legal amnesty had been granted. There were some who might wish to return to that period, asserting claims of discrimination in the form of deprivation or denial of ancestral land rights, or lack of access to social services. They were promoting the very policy of racialization that had led to systematic marginalization and stigmatization and ultimately resulted in the genocide. The people of Rwanda had resolved to turn their backs on that legacy of discrimination and impunity and instead embrace a common Rwandan identity, "Ubunyarwanda", with equality for all before the law and enjoyment of the same rights and with no single group's interests prevailing over those of any other group.

4. Protection from discrimination and the principle of equality were enshrined in the Constitution. Under its article 16, discrimination of any kind, on such grounds as ethnic origin, skin colour, race or language, was punishable by law. Relevant provisions of international human rights treaties ratified by Rwanda were incorporated into domestic law. Positive discrimination, in the form of affirmative action measures, might be practiced to assist the most vulnerable members of society.

5. Law No. 18/2008 on the punishment of the crime of genocide ideology had been superseded by Law No. 84/2013. The 2008 law had been drafted as an urgent response to study findings revealing that genocide ideology and divisive ideas were still widespread. However, in practice, the law had proved to have significant loopholes, which the new law was designed to fill. It defined the crime of genocide ideology, the acts constituting that crime and the associated penalties. It also defined related offences separately and guaranteed the principle of presumption of innocence and other due process rights.

6. With regard to the situation of the Batwa people, a national policy on unity and reconciliation had been adopted in 2007 with the aim of bringing together citizens who shared the same nationality and culture and had equal rights and healing the wounds inflicted in the past. The attainment of that objective had required a radical shift on the part of Rwandan society and a willingness to transform Rwanda into a united nation. In Rwanda all people were treated equally in every aspect of life. The Government did not consider any group of Rwandans to be distinct from any others.

7. All persons obtaining the status of refugee were documented and enjoyed the rights and liberties provided for in law. They also had access to all social services, including health care and education.

8. **Ms. Hohoueto** (Country Rapporteur), welcoming the Government's dissemination of the Committee's previous concluding observations in all official languages, said that the State party was to be commended on the participatory process followed in preparing the latest report. Rwanda had made extraordinary progress towards social cohesion since 1994 and had introduced highly successful socioeconomic development policies and programmes. There nevertheless remained a number of obstacles that hindered the implementation of the policies and programmes relevant to the Convention.

9. The 2012 census had yielded socioeconomic data confirming the country's progress in terms of health, drinking water supply and sanitation, and other areas. However, it had taken no account of the ethnic make-up of the population, since the classification in three ethnic categories — Hutu, Tutsi and Twa — had been abolished in the interests of unity and reconciliation. The three groups had been subsumed into a single category of "Rwandans", speaking a single language, Kinyarwanda, reflecting the conviction that development depended on the preservation of the constructive values that formed the foundation of Rwandan culture and identity. Yet the refusal to recognize people's cultural identity could well rekindle ethnic division, since traditional ethnic groups were unable to exercise their cultural rights. The promotion of national unity was not incompatible with the right to freely claim membership of an ethnic group. Instead, the categories used in the census had been based on nationality: Rwandan, Rwandan with dual nationality and foreign nationals. She would like to know what purpose was served by distinguishing two categories of Rwandans, which could become a new basis for discrimination.

10. No recognition had been given in the census to indigenous populations such as the Batwa. Further categories had been created by the Government for the purposes of its development programmes. Vulnerable groups — for example genocide survivors or persons with disabilities — and historically marginalized groups were included in social protection programmes according to their level or degree of economic or social vulnerability. The Committee questioned the criterion of "level of vulnerability" and would appreciate an explanation of why such a distinction was considered necessary. Moreover, "historically marginalized groups", which included the Batwa, were indigenous forest- or lakeshore-dwelling minorities with particular ways of life, yet there was a reluctance to recognize them as such in order to avoid having to recognize their specificities and thus their associated rights.

11. The Committee required demographic and ethnic statistics in order to be able to evaluate the equitable implementation of human rights across all sectors of the population and the State party's progress in eliminating discrimination based on race, colour, descent or national or ethnic origin. What the Committee would like to see was that, in its efforts to forge national unity — and notably in the context of the Vision 2020 programme — the State party was taking due account of the characteristics of each of its population groups.

12. She noted that the right to housing was not a constitutional right in Rwanda. However, the State party was also a party to the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights, both of which enshrined the right to housing. Since duly ratified international treaties prevailed over domestic organic and ordinary law in Rwanda, the right to housing could therefore be asserted in the State party's courts. The State party had implemented several housing programmes that had entailed moving families from one form of housing, for example grass thatched houses, to modern dwellings. She wondered whether the families concerned, particularly poorer people, had freely consented to resettlement and whether due consideration had been given to the historically marginalized groups.

13. Given the standardization of the national language, she would like to know whether Rwandans were permitted to speak their mother tongue with members of their own community at home, in the street, at school and in the workplace. With regard to Law No.

02/2013, which had introduced a mechanism for self-regulation of the media, she would like clarification of the notion of self-regulation. She would also like statistical data on the exercise of the freedom of thought and conscience; the report contained no such information, although there was a good deal of data on the freedom of religion and worship.

14. Turning to the definition of racial discrimination in the State party's legal order, she noted that discrimination on virtually any grounds was prohibited, but what was still lacking for full compliance with article 1 of the Convention was a reference to the purpose of discrimination, namely "any distinction, exclusion, restriction or preference". The Committee welcomed the current moves to amend Law No. 18/2008 to include intent as an element of the crime of genocide ideology. The law should also give an exhaustive list of all material acts constituting that crime, as the courts should not have discretion to interpret the law.

15. Not all provisions of article 4 of the Convention were covered by Rwandan law. The Committee again wished to recommend that the State party include the necessary provisions in its Penal Code so as to give full effect to that article. Similarly, Law No. 47/2001 on prevention, suppression and punishment of the crime of discrimination and sectarianism referred only to statements made by organizations. She invited the delegation to explain how the law dealt with views expressed by individuals or prominent persons or politicians.

16. According to the report, there had been no proven cases of racial discrimination in matters of security of person in Rwanda apart from the genocide against the Tutsi. However, the report provided no statistics on complaints, prosecutions, sanctions and reparations as requested by the Committee in its previous concluding observations; the Committee required such data in order to enable it to evaluate possible discrimination in judicial proceedings and the procedures of national human rights institutions. The Committee welcomed the administrative and financial independence of the judiciary; it would appreciate information on the percentage of the national budget allocated to the Ministry of Justice.

17. The Committee was concerned at the role of the mediation committees, which received cases before they went to court, a situation that appeared to hinder access to justice. It was also concerned at the fact that intermediate courts, which tried crimes of genocide and crimes against humanity, were single-judge courts, which meant that one person was responsible for prosecuting, investigating and rendering a verdict; fairness and impartiality could not be guaranteed under such circumstances. The report gave no indication of whether Rwanda had a constitutional court. She asked what body verified that laws were not unconstitutional. With regard to equal access to justice, she would like to know why foreign plaintiffs were required to put up a special surety in legal proceedings, in an amount set by the court.

18. Regarding the situation of the Batwa, the Committee was of the view that the values associated with a national identity, or Ubunyarwanda, were not incompatible with the embrace of a particular cultural identity. Although the State did not explicitly recognize the Batwa as an indigenous people, it did recognize them as a historically marginalized group, i.e., a group effectively excluded from decision-making processes and whose development needs were not taken into account. The Government recognized the particular situation of some vulnerable populations and was attempting to improve their living conditions and integrate them into mainstream Rwandan society so that they could fully enjoy their rights as Rwandan citizens.

19. The Committee was concerned at the limited impact of measures taken by the State party for the benefit of the Batwa people, who continued to suffer poverty and remained the object of negative stereotypes and discrimination in access to education, decent housing,

social services and employment. The approximately 36,000 Batwa, who were indigenous hunter-gatherers, had been expelled from their ancestral lands in the forests after the genocide in order to make way for the creation of national parks, and they now had no means of livelihood. She asked whether expropriation procedures had been followed when expelling them from their traditional lands and whether they had been compensated. Although, as a vulnerable group, the Batwa were in theory covered by existing programmes, she wondered whether there had been any evaluation of the support they actually received. She would also like to know how they could access the justice system to assert their rights. It was necessary to recognize the cultural specificity and indigenous status of the Batwa people and develop a specific reintegration programme for them.

20. Noting that the number of migrants arriving in Rwanda increased every year, she expressed concern that asylum seekers faced obstacles in formalizing their asylum applications; for example, they could not enter the premises of the Directorate General of Immigration and Emigration to obtain information, and the Directorate did not meet the deadlines established for forwarding their applications for review.

21. **Ms. McDougall** said that, as Special Rapporteur on minority issues, she had had the opportunity to visit Rwanda in 1995 and in 2011, and had thus witnessed first-hand the extraordinary progress made in the aftermath of the genocide. It was evident that further progress had been made since then, and she commended the Government's efforts made to foster healing and transformation and promote development and growth. However, she was disturbed by the issue of identity in Rwanda. While she fully understood the reasoning behind the Government's efforts to forge unity through the creation of a single national identity, she did not see that as incompatible with allowing different communities to continue to enjoy the positive aspects of their own cultures and identities.

22. She was also concerned about the situation of the Batwa people, who were living in extreme poverty on the edges of mainstream society. Whether they were recognized as an indigenous people, as the African Union had done, or as a unique cultural group within Rwandan society, the reality was that the Batwa were facing extinction and their culture and traditional practices were at risk of being lost to humanity. It was essential to preserve their culture and also to address their deplorable living conditions. The Batwa required special programmes, as they often did not qualify for or could not access general programmes for marginalized groups. She would be interested to know whether there had been any assessment of the impact of measures taken to benefit the Batwa people in the areas of poverty alleviation, health care and education.

23. While the introduction of a decentralization policy was generally a positive step, it was important to ensure the necessary oversight by the central Government so that local authorities did not discriminate against particular groups, such as the Batwa, when determining eligibility for assistance programmes. She wondered whether there was any monitoring of the distribution of government support by local authorities to guarantee that national standards were being upheld. She invited the delegation to provide clarification on the settlement policy for the Batwa people whereby they were advised and helped to stay in agglomerations.

24. **Mr. Avtonomov** said that the State party was to be commended on its regular reporting to the Committee, its excellent updated core document and the impressive progress made in many areas. While he understood the State party's reluctance to highlight differences among different population groups in the aftermath of the genocide, it was important that special measures should be taken to support the socioeconomic development and education of the Batwa people, who faced significant structural discrimination. It was possible to collect data on the situation of that and other historically marginalized groups on an anonymous basis without stigmatizing them. The Committee would be interested in

receiving further information in that regard. He wondered whether persons with albinism faced discrimination in Rwanda as they did in some other African countries.

25. **Mr. Bossuyt** said that it was impossible to consider the situation of racial discrimination in Rwanda without making reference to the 1994 genocide. Recalling the appalling atrocities committed and the failure of the international community to intervene, he said that the State party's economic and social progress and developments in the fields of health and education were remarkable, as was the discipline with which the Rwandan people were rebuilding their country. It was not surprising that the Government wished to do away with the ethnic divisions that had given rise to the genocide and to foster unity among all Rwandans, although that was not the only possible approach to the situation, as had been seen in neighbouring Burundi. As sovereign countries, each could choose the approach that it considered most appropriate, provided it did not give rise to human rights violations.

26. The international community was hardly in a position to criticize the policy choices made by the Rwandan Government, especially since it had done nothing to prevent or stop the genocide. However, it seemed that the marginalized and impoverished Batwa community was paying the price for those policies. Having been driven out of their forest homes without compensation, they were in real need of special measures as envisaged under the Convention. He believed that it would be possible to provide assistance to the Batwa community without jeopardizing the Government's anti-ethnicist policy simply by providing compensation to all those who had been expelled from the forests and to their descendants, without regard to ethnicity. The fact that the Batwa would make up the majority of those compensated would merely be a reflection of the reality of the situation and not a discriminatory policy. He urged the Government to consider such compensation.

27. **Mr. Amir** said that the State party report responded in a very satisfactory manner to all of the Committee's past recommendations. The inclusion of an abundance of statistical data was especially welcome. Rwanda was to be commended for welcoming a large number of refugees from Burundi warmly and in a spirit of solidarity, although the living space allotted to them was perhaps too small. Rwanda had ratified both the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto and applied the articles of those agreements.

28. On the subject of the Batwa people, it was important to understand that exclusion, injustice and a lack of understanding could create a breeding ground for hatred and undo all the progress the country had made in recent years. Rwanda could serve as an example to other countries in Africa of how to resolve inter-ethnic conflict, rebuild a society and promote a unified national identity. It deserved hearty congratulations for its success.

29. **Mr. Murillo**, agreeing that the State party's achievements to date were most commendable, said that he wished to encourage Rwanda to continue on the path to peace and reconciliation. The Batwa people were different from other vulnerable groups and required special attention. The Committee would be interested to know how the general public in Rwanda perceived the Batwa people in general.

30. **Ms. Dah** said that, while the report provided a wealth of interesting information, in future the State party should try to adhere to the Committee's guidelines regarding report length. Noting that Rwanda had pursued a vigorous policy of decentralization, she asked how it was ensured that all provinces, districts and villages had sufficient financial capacity to resolve problems. The actions taken by the State following the genocide had been courageous and generally successful in terms of managing ethnic diversity. Its approach was not without risk, however, since people were unlikely to forget that were members of a particular group and would undoubtedly remain attached to the culture of that group.

31. She was curious to know whether the Batwa people were regarded as a historically marginalized group. The measures mentioned in paragraph 40 of the report, which aimed to integrate marginalized groups into the mainstream of Rwandan society, were not in line with the concept of special measures as defined by the Committee. The purpose of special measures was to help a specific marginalized group to reach the same level in society as other groups. Once that objective had been achieved, the measures would then cease to be applied. However it did not appear that any such special measures had been applied to the Batwa. The Committee urged the State party to consult its general recommendation No. 32 (2009) on the subject of special measures and to adopt such measures for the Batwa, especially in the area of education. With regard to other special measures, the progress made by women in Rwanda was to be commended, especially in relation to the successful implementation of quotas for high-level government and legislative positions.

32. She would like to know what measures were in place to assist repatriated persons, who were playing an important role in rebuilding Rwanda. She also wondered whether the Government planned to strengthen cooperation with the Office of the United Nations High Commissioner for Refugees in order to better manage the flow of refugees arriving in Rwanda as a result of subregional conflict. It was important to ensure that certain fundamental rules and principles, such as non-refoulement and equal treatment, were applied consistently to all refugees, even in crisis situations.

33. The National Commission for Human Rights should have participated in the dialogue between the Committee and the State party in order to provide its perspective on the situation in Rwanda. It would have been useful to have heard the views of more NGOs as well.

34. **Mr. Kemal** said that it was clear that the State party had approached its reporting obligation with seriousness and dedication. Given the events of the past, the State party's policy of promoting national unity and cohesion was both understandable and recommendable. Its emphasis on economic development was also praiseworthy. The Government should be commended for the way it had managed the flow of refugees, although, as had been mentioned, the space allotted to them was limited. Regarding the Batwa, there had been a significant decline in the population in recent years and the community now only numbered around 35,000 people. It was therefore certainly feasible and appropriate to implement special measures. To enable the Batwa community to regenerate and grow again, it was essential to ensure that they had access to government programmes for historically marginalized groups. In light of the country's recent economic progress, the Government should be able to put in place such special measures even without foreign aid.

35. **Mr. Lindgren Alves** said that the progress made by the State party over the previous two decades was truly exceptional. The State party's reluctance to collect disaggregated data on the ethnic makeup of the population was indeed understandable, given its history. The Committee should perhaps not insist that States parties in a similar situation provide such data. While statistical data were important, there must not be too much emphasis on differences between groups, since obsession with differences and with identity could lead to conflict. Moreover, the Committee could often discern where inequality existed without disaggregated data. It could not help but notice, for example, the persistent difficulties faced by the Batwa. While they had not been recognized as an indigenous people, the Batwa were a historically marginalized group, which made them eligible to benefit from temporary special measures aimed at facilitating their integration into mainstream society, as provided under the Convention. The Batwa and other marginalized groups should be given the opportunity to contribute to the process of forging a new national identity and to do so on an equal footing with the rest of Rwandan society.

36. **Mr. Yeung Sik Yuen**, agreeing that the State party should take action to improve the situation of the Batwa people, said that the remarkable progress made in rebuilding the country after the genocide of 1994 was chiefly attributable to the State party's efforts to empower its people; the measures that it had adopted to meet their basic needs, such as cash transfer schemes and animal husbandry initiatives; and its willingness to seek out external expertise when needed.

37. **Mr. Cali Tzay**, noting that the State party's approach to achieving national reconciliation, cohesion and unity involved classifying people according to their level of vulnerability as opposed to their ethnicity, enquired which groups were not considered vulnerable. He was curious to know how the State party had gone about selecting the specific characteristics and values to be embraced in the effort to forge a new national culture and identity. It seemed to him that the values promoted through the "Ndi Umunyarwanda" (I am Rwandan) campaign would have had to have been drawn from some of the cultural values espoused by individual ethnic groups. The State party should not shy away from leveraging existing ethnic diversity to build a new national culture. Diversity was not necessarily synonymous with division and conflict.

38. The State party should also give serious consideration to amending the Code of Criminal Procedure so as to ensure that the Batwa and other marginalized or vulnerable groups had access to justice, as required by the Convention. It should be recalled that the absence of complaints of racial discrimination did not necessarily mean that it did not exist, but rather could point to a lack of knowledge and understanding of the procedure for reporting such acts, distrust of the State authorities or fear of reprisals. He encouraged the State party to step up its efforts to inform the population of the complaints procedures available to victims of discrimination and to restore confidence in the authorities.

39. **Mr. Khalaf** said that, while it was gratifying to learn that women held 30 per cent of the seats in the Chamber of Deputies, it was his understanding that female deputies could only be elected by women. If that was true, it would appear to be a situation of discrimination. He would appreciate clarification of the criteria used to determine the composition of the Chamber of Deputies and the Senate. The deplorable situation of the Batwa was largely attributable to the fact that they had not received compensation following their expulsion from their forest home, which had left them without the means to meet their basic needs in terms of food, housing, health care and education The Batwa's lack of formal title to their lands could not be used as a justification for their expulsion and the failure to provide them with compensation, as their ancestors had occupied the land in question for centuries. The State party should take immediate action to protect the Batwa people and to prevent the further deterioration of their situation. It should also take steps to ensure that the surface area allocated to each person in refugee camps was in conformity with the applicable international standards. Lastly, he wished to know whether a refugee who was married to a Rwandan national acquired Rwandan nationality and, if so, whether there were any circumstances in which citizenship could be denied.

40. **Ms. Shepherd** asked what steps the State party planned to take to carry out the Programme of activities for the implementation of the International Decade for People of African Descent. She would also like to know whether secondary school dropout rates had declined and whether the rates tended to be higher among males than among females; if so, what were the reasons behind that trend and the strategies in place to reverse it? She would also like information on strategies for ensuring that women and other vulnerable groups had equitable access to higher education and well-paid jobs. She wished to know, as well, to what extent the education system was being used to eliminate stereotypes and encourage a wider acceptance of gender equality in Rwandan society, which could, in turn, enhance the impact of measures such as the gender quotas in place within the national parliament. Lastly, she urged the State party to take steps to protect the Batwa and to take account, in

its efforts to promote national unity and forge a common identity, of the specific characteristics and needs of the various groups that made up the Rwandan population.

41. **The Chair** noted that other human rights bodies had also expressed concern about the Batwa. The Committee on Economic, Social and Cultural Rights, for example, had recommended, in its concluding observations on the State party's most recent periodic report to that body (E/C.12/RWA/CO /2-4), that the State party should take steps to combat stereotypes, stigma and discrimination against and the marginalization of the Batwa, including by ensuring the effective application of its anti-discrimination legislation. The Committee would appreciate information on any groups of women who were vulnerable to racial discrimination in Rwanda and on how many Batwa women held seats in the national parliament and how many held senior decision-making positions.

The meeting rose at 5.45 p.m.

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Summary record of the 2429th meeting
Held at the Palais Wilson, Geneva, on Friday, 29 April 2016, at 10 a.m.

Chair: Ms. Crickley

Contents

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined eighteenth to twentieth periodic reports of Rwanda (continued)

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The meeting was called to order at 10.10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined eighteenth to twentieth periodic reports of Rwanda (continued) (CERD/C/RWA/18-20 and CERD/C/RWA/Q/18-30)

1. *At the invitation of the Chair, the delegation of Rwanda took seats at the Committee table.*

2. **Mr. Ngarambe** (Rwanda), responding to questions posed at the previous meeting, said that he would start with a brief clarification regarding the history of Rwanda and the composition of its population. It would be incorrect to think that there had been ethnic tensions in pre-colonial Rwanda. The population had lived mostly in harmony and had settled disputes in a peaceful manner; they had had one king, worshipped one God and shared the same language, values and culture. The divisions in society had been based on economic activity: the Batutsi raised livestock, mostly cattle, and were large landowners; the Bahutu were small farmers; the Batwa were tanners, blacksmiths, potters and basket-weavers. There had been significant inter-mingling and intermarriage between the groups. The colonial powers, influenced by a Hamitic interpretation of racial origins, had applied ethnic labels to those socioeconomic groups: the Batutsi had supposedly been Hamites originally from Abyssinia; the Bahutu, Bantus from the Lake Chad area of central Africa; and the Batwa, indigenous pygmies.

3. The real history of pre-colonial Rwanda was thus one of various groups living in one nation and sharing the same language, religion, values and culture. The racist colonial divisions had destroyed the social fabric of the nation, hindered development and increased poverty. The Batwa people, the most negatively affected, unable to survive as artisans and service-providers, had been forced to become forest-dwellers and hunter-gatherers. The end result of that imposed ethnic separation had been racial strife and genocide in Rwanda.

4. Following the genocide, the new Government, with a view to improving the lot of the Batwa, the most marginalized group, and saving them from extinction, had encouraged them to abandon their subsistence existence in the forest and accept its offer of decent housing, farmland, social services and education. While some 40 per cent of the population still lived in poverty, including many Batwa, great progress had been made and the Government hoped to reduce the poverty rate to below 20 per cent by 2020 as it worked to improve the standard of living of all Rwandans, including historically marginalized groups.

5. Turning to questions relating to statistics on the population and socioeconomic indicators, he said that the Government would continue to gather information only on the population as a whole, without reference to ethnicity or race. The fourth population and housing census, in August 2012, had included indicators relating to a number of sociocultural characteristics, one of which had been distribution of the population by nationality. It was in that context that data had been collected on dual nationality. The fourth integrated household living conditions survey had provided information for 2013-2014 on enjoyment of economic, social and cultural rights, including data on poverty, inequality, employment, living conditions, health, education, housing and household consumption.

6. With regard to the adoption of a definition of racial discrimination consistent with article 1 of the Convention, articles 15 and 16 of the Rwandan Constitution prohibited discrimination of any kind. In the area of employment and the right to work, article 12 of Law No. 13/2009 regulating labour prohibited discrimination of any type in respect of employment. That law was rigorously applied; employers guilty of a violation would be

brought before the competent authorities. Internal mechanisms also existed within various institutions and the private sector to deal with discrimination.

7. Pursuant to Law No. 84/2013 on the ideology of genocide, 150 cases had been registered between 2013 and 2014, of which 143 had gone to trial. Consultations were under way with a view to bringing the 2012 Penal Code into compliance with article 4 of the Convention; the Committee's concluding observations would be considered in that process. Measures had already been adopted to prohibit the offences mentioned in article 4.

8. The goal of the Second Economic Development and Poverty Reduction Strategy was growth and poverty reduction through economic transformation, rural development, increased productivity and youth employment, and accountable governance. The aim was to increase gross domestic product (GDP) per capita to $1,000 by 2018 and to reduce the poverty rate to less than 30 per cent and the extreme poverty rate to less than 9 per cent. That would continue the trend of the past decade of rapid growth, poverty reduction and reduced inequality. Between 2001 and 2015 GDP had increased approximately 8 per cent per year. The benefits of that growth had been shared by all population groups. More than 1 million Rwandans had been lifted out of extreme poverty over the previous 10 years.

9. With regard to the effect of development policies and programmes on the Batwa, poverty eradication policies under the first and second Economic Development and Poverty Reduction Strategies, Vision 2020 and initiatives such as *Umurenge* and *Ubudehe* were aimed at ensuring that all population groups, including historically marginalized groups such as the Batwa, enjoyed the same standard of living by 2020. The Government wished to provide all Rwandans with decent housing, water, sanitation and other services through the National Human Settlement Policy, which governed issues relating to housing. Between 2008 and 2013 the percentage of rural households living in new settlements had increased from 22 to 74 per cent; by 2020 it was expected that 65 per cent of the population would be living in the new villages, or *imidugudu*, and 35 per cent in urban areas. Where land had been expropriated, appropriate, legally established compensation had been provided without discrimination. All persons could rent, buy or sell property without discrimination.

10. Local authorities were required to facilitate access for all persons to government programmes and were accountable for ensuring the well-being of all their citizens. The Government provided funding for decentralization and regularly assessed its impact.

11. Various programmes had been undertaken to improve access to health care and education for historically marginalized groups, including the Batwa. Reproductive, maternal and child health had been prioritized in a context of major health sector reforms and decentralization. The health system had been strengthened through better planning, increased resources, evidence-based policymaking and strong community involvement. As a result, tremendous progress had been made towards universal coverage and equitable access to health care.

12. Rwanda was close to achieving universal enrolment in primary education; currently 90 per cent of primary-age girls were enrolled in school. Twelve years of basic education, including free primary education, was offered to all children. Many schools were working with the United Nations Children's Fund (UNICEF) to create child-friendly schools that promoted gender sensitivity in order to prevent girls from dropping out. The primary school dropout rate in 2013 had been 15.7 per cent among boys and 12.9 per cent among girls; at the secondary level the rates had been 14.7 per cent among boys and 14.9 per cent among girls. Students who dropped out could complete their studies later or take vocational training. The curriculum at all levels stressed combatting stereotypes and discrimination, which had helped to forge a strong national identity.

13. All citizens, including historically marginalized groups, had the right to participate in political life. Decentralization encouraged participation at the community level. Persons

from historically marginalized groups had been elected to various positions at local and national level, and the President had the power to appoint them to the Senate; currently there was one senator representing historically marginalized groups. Quotas for women and other groups in parliament had been established following a broad participatory process and were perceived by the public to be very beneficial.

14. Article 37 of the Code of Criminal Procedure guaranteed the right to legal counsel; indigent persons and minors had the right to free legal aid, and a legal aid system had been introduced to ensure access to justice for vulnerable groups. The Bar Association required its members to participate in the system. A legal aid policy had been adopted in 2014 to streamline and improve legal aid. The Ombudsman had the right to request the Supreme Court to review any court decisions deemed to be unjust. The budget of the Ministry of Justice amounted to 0.5 per cent of the national budget. Foreigners were required to post a surety in order to ensure that legal proceedings in which they were involved were seen through to conclusion.

15. The Government worked closely with the Office of the United Nations High Commissioner for Refugees and humanitarian actors to assist refugees. It was committed to the principles of non-refoulement and non-discrimination against any refugee or asylum seeker. There were currently 151,689 refugees in Rwanda, 74,516 from Burundi and 75,511 from the Democratic Republic of the Congo. The Government continued to allocate land to refugees, while also taking into account the needs of the local population and protecting the local environment. Any person having refugee status enjoyed the rights and liberties provided by Rwandan law. Refugees in camps had the right to food, shelter, health care and firewood. Refugees had some job opportunities in the camps and, once their status was regularized, could seek employment in the labour market.

16. A person seeking refugee status must be on Rwandan territory and must report to the nearest local authority, which must transfer him to the nearest immigration office within 12 hours. That office had 24 hours to register the individual, following which a 3-month residency permit was issued. The refugee's file was referred to a status determination committee within 15 days. The time limits were rigorously observed. A refugee who married a citizen was eligible to apply for naturalization. Rwanda had an open-door immigration policy that did not discriminate against any immigrant on any grounds. Rwandan returnees were provided with a reintegration package and assisted with assimilation into their former communities.

17. Responding to other questions from the previous meeting, he added that Law No. 2/2013 regulating the media established a self-regulating body of journalists to ensure compliance with the principles governing the media in Rwanda. There was no discrimination against albinos. Rwanda was committed to carrying out the Programme of activities for the implementation of the International Decade for People of African Descent at the national, regional and international levels.

18. **Ms. McDougall** said that the information provided on the history of social stratification in Rwanda had been very instructive. The State party had made great strides towards the elimination of poverty through economic growth and increased prosperity for all groups in society. She would, however, like more information on the impact of the many programmes implemented for that purpose. The Committee had an obligation to monitor not only de jure racial discrimination, but also any negative effects of programmes and policies on vulnerable groups.

19. She would like to know whether the Government acknowledged that there was still discrimination against the Batwa in Rwandan society and whether those discriminatory attitudes might influence the way in which local authorities distributed the benefits of government programmes. Might there be institutional racism that could be creating barriers

for some groups? If so, how could the State party remedy that problem without conducting impact assessments at the local level to determine whether all social groups were benefiting equally from government programmes?

20. As she understood it, groups and individuals had the right under international law to assert their own identity; an identity could not be imposed or controlled by a government. While it was easy to see why the State party wished to eliminate notions of ethnicity and race in Rwandan society, the Batwa had a right to self-identify as an indigenous group. Moreover, a diverse society could and should be a positive thing, with different groups and cultures contributing to a better society.

21. **Mr. Ngarambe** (Rwanda) said that he fully agreed that it was important not just to have good intentions but also to make a real impact. His Government had put in place an innovative governance system that was based on participation, measurable objectives and regular evaluation. Local governments were held fully accountable for the actions they took to benefit the people in their communities and were responsible for ensuring the welfare of the most vulnerable groups.

22. Each year the local governments publicly took stock of what they had accomplished, and the people in communities were encouraged to comment and raise objections if any of the claims made were not based on fact. Tremendous results had been achieved through that mechanism, and it was hoped that by 2020 extreme poverty would be nearly eradicated and all Rwandans would have been raised to the same economic level.

23. A distorted version of history had been imposed on and accepted by the Rwandan people, resulting in racism, hatred and discrimination. Current efforts were aimed not at imposing a new identity on the people, but rather on educating them about their country's true history and values, so that they would embrace their real identity, which was first and foremost that of being Rwandan. Rwandan culture had been homogenous from time immemorial; the Rwandan people shared the same language, belief and customs. There were no indigenous peoples in Rwanda, since no group could claim to have been there any longer than others.

24. **Mr. Avtonomov** asked whether there had been any discussion within the State party about the possibility of ratifying the amendment to article 8 of the Convention and, if so, whether any decision had been taken on the matter. He also asked whether the State party intended to make the optional declaration provided for in article 14 of the Convention.

25. **Mr. Murillo Martínez** said that he wished to know more about the reconciliation process in Rwanda and about how successful it had been in healing the wounds left by the genocide. He would also like clarification of whether the genocide ideology cases to which the head of delegation had referred were specifically connected to the genocide or were more general cases of discrimination.

26. **Mr. Ngarambe** (Rwanda) replied that the cases were directly related to the genocide. He had taken note of the questions concerning the amendment to article 8 of the Convention and the declaration provided for in article 14 and would forward them to State authorities in Rwanda for a response.

27. One of the biggest challenges faced by Rwanda after the genocide had been that of rebuilding as a united country. Tremendous progress had been made in that regard. The testimonies and memories of those involved in the genocide had served as the foundation for building the country's future. The top priority had been to serve justice and avoid retaliation.

28. Given the vast numbers of people involved, it would have been impossible to bring them all to justice through a traditional court system. The solution that had been found was an innovative form of justice that focused on bringing the truth to light, punishing the

perpetrators and providing support to the victims. It had served as a healing process for both perpetrators and survivors and enabled them to resume normal life in their communities. The Government was also making parallel efforts to educate people about their real history and teach them to live together peacefully and build a new nation. Thus far, Rwanda was 80 to 85 per cent of the way towards achieving its objective of full reconciliation. It was now a very safe country, where security was guaranteed for everyone and the Government, police force, justice system and other authorities were trusted by the people.

29. **Ms. Shepherd** asked who was involved in rewriting Rwandan history in a way that highlighted the country's historical unity. While she understood why the Government felt the need to forge a single Rwandan identity, she wondered to what extent it was attempting to force compliance, for example with regard to religious beliefs. To what extent were indigenous beliefs respected? She would like more information on how the Government ensured that all groups were able to participate in political and economic life on an equal footing and that structural discrimination or historical barriers did not impede their participation. She also wished to know what efforts were being made to ensure that the curricula used in the education system matched the needs of the labour market. Lastly, she asked whether there had been a dispersal of people from current-day Rwanda at the time of the colonial division of Africa in the 1880s and, if so, whether any of the descendants of those people were attempting to return to Rwanda. If so, she wished to know how they were integrated into Rwandan society.

30. **Mr. Khalaf** requested clarification as to whether the women elected to parliament were elected by the general public or only by other women. He also asked whether the State party planned to allocate additional land to refugee camps in order to meet minimum standards for the amount of space per person in such camps.

31. **Mr. Ngarambe** (Rwanda) said that his Government firmly believed in the value of learning one's own history. Rwandan historians, both those living in the country and others living abroad, had made great contributions to the efforts to bring that history to light. Additional support had been provided by experts from all over the world who were working to write and disseminate Rwandan history in an objective and scientific manner. By listening to the testimonies of elders, historians had gradually reached consensus about the country's true history, which was now part of the school curriculum.

32. The Government's current efforts were aimed not at forging a new united Rwanda but at recreating the original united Rwanda that had been dismantled by colonial powers. In pre-colonial times, there had been no religion per se in Rwanda. All Rwandan people had shared a belief system and a practice of praying to God through the intercession of their dead ancestors, but without any formal religion.

33. Rwanda aimed to become a middle-income country by 2020 and to develop a knowledge-based economy with a strong focus on the services sector. He agreed that the education system must be geared towards skill development and capacity-building that dovetailed with industry needs.

34. Historically, Rwanda had been much larger than was currently the case, and there were many Kinyarwanda speakers who shared Rwandan culture living in neighbouring countries. Members of that diaspora were free to come to Rwanda and claim their Rwandan nationality. They were not discriminated against in any way; on the contrary, they were most welcome.

35. In total, 64 per cent of Rwandan parliamentarians were women, the highest percentage of female lawmakers in the world. Under the Constitution, at least 30 per cent of parliamentarians must be women. They were elected by the general population on the basis of their qualifications and electoral platform. However, in order to ensure that the quota

was met, special elections were held in which only women voted to elect the requisite number of parliamentarians from a slate of female candidates. The same practice was followed in elections of parliamentarians belonging to other special categories for which the Constitution established quotas.

36. There was enormous demographic pressure on Rwanda owing to its topography and the huge numbers of displaced persons welcomed by the Government, which fully respected the principle of non-refoulement. Specific data on refugee camp occupancy rates would be transmitted to the Committee in due course.

37. **Ms. Mohamed** asked whether foreign men and women married to Rwandan citizens were granted Rwandan nationality on an equal basis, whether nationality was granted automatically once applicants had completed the necessary formalities and whether any measures had been taken relating to the expropriation of land belonging to the Batwa.

38. **Mr. Amir**, stressing the importance for a nation of collective remembrance of the past, said that it was essential to commemorate those who had died in the Rwandan genocide. He asked whether genocide victims were buried in special cemeteries, whether the graves of unidentified victims were marked as such, whether cemeteries contained memorials to the victims, whether they were buried by family members and whether young persons were taken to visit their graves in order to ensure that the genocide was not forgotten.

39. **Mr. Ngarambe** (Rwanda) said that foreign men and women married to Rwandan nationals were automatically granted Rwandan nationality once the appropriate formalities had been completed. As to the question of the so-called Batwa lands, societal and economic shifts had left some small groups of Batwa potters and basket-weavers unable to make a living, and they had resorted to living as hunter-gatherers in the forests. Prior to Government intervention, those groups had not had any access to health-care services, vaccinations or clothing and had been at risk of dying out as a group. The forests had never belonged to the Batwa because they had not really settled in or exploited them, living instead in temporary, makeshift shelters. Therefore, they had not been paid compensation upon being relocated, but were, rather, being gradually reintegrated into society and provided with housing and, in some cases, plots of land. They also received education and health-care services.

40. Many of the victims of the Rwandan genocide had suffered torture and humiliation, before being murdered and thrown into mass graves, and it was vital to restore their dignity and humanity. Accordingly, the remains of victims had been exhumed, identified, washed, placed in coffins and buried in memorial cemeteries across the country, which were legally protected in perpetuity and were located near to major roads and clearly signposted. Centres had been set up to provide visitors with information on the genocide. Foreign and official visitors to Kigali were encouraged to visit the city's genocide memorial. Memorials served to combat genocide denial and remind people of the need not only to remember the dead but also to show solidarity towards those who had survived and help them to bear witness to their suffering, overcome its after effects and take part in the rebuilding of the country. Some Rwandan genocide memorials had been nominated for recognition by the United Nations Educational, Scientific and Cultural Organization as World Heritage sites.

41. **Mr. Marugán** said that the Rwandan authorities were to be congratulated on their efforts to improve living conditions in the country. He asked whether steps had been taken to disseminate legislation on racial discrimination, particularly among the Batwa, and to inform the latter of all the legal remedies available to them, in line with the recommendation contained in the Committee's 2011 concluding observations on the State party's previous report. He would also like to know whether the national authorities had contacted NGOs representing the Batwa and other communities with regard to possible

offences of sectarianism, discrimination and incitement of racial hatred; whether there were any plans to provide specific training to police officials and public prosecutors dealing with victims of those offences; and whether provision had been made for administrative offences or disciplinary proceedings relating to discrimination carried out by members of the armed forces, law enforcement officials or in the fields of education or employment. Additional information on specific measures taken to combat discrimination in employment as a part of the National Employment Policy would be welcome. He also wondered whether the Labour Code provided for offences of discrimination and whether the Labour Inspector, the Ombudsman or any other body had put in place policies to provide training on, raise awareness of and combat offences of discrimination.

42. **Mr. Kemal** said that further research into the history of Rwanda might throw more light on the origins and problems of the Batwa. When tackling issues affecting small, vulnerable communities that were spread across a large area, such as the Batwa, a decentralized approach could lead to uneven treatment of the target population. It might be more effective to designate a high-level body with the power to exercise active oversight, remedy injustices and take special measures to assist the group concerned.

43. **Mr. Ngarambe** (Rwanda) said that information on the Convention had been disseminated across the country and national educational programmes on citizens' rights and duties were offered at the local level. The Penal Code was being revised, and the Government had undertaken to bring it fully into line with article 4 of the Convention. Measures had been taken to ensure transparency in the public and private sectors in order to prevent discrimination. Access to employment in the public sector and to educational opportunities was based on merit and such opportunities were advertised. Competitive examinations for positions were run by an independent body and the names of candidates were not disclosed until the final results were known. People were informed of their rights and of how to report discrimination by police officials, members of the armed forces or employers. A telephone hotline had been set up to enable complaints of discrimination to be filed; complainants could initiate legal action and had access to legal aid.

44. A good example of an effective government initiative to help the most vulnerable members of society was the community-based health insurance programme. The cornerstone of the programme was ensuring equity in health care for all persons, so that everyone received the same benefits regardless of ability to pay. The premium was based on income, with the richest paying the most and the poorest the least. The Government paid the insurance contributions of those who could not afford it.

45. As to the effectiveness of the National Decentralization Policy, evaluation of the policy was carried out through a participatory process that involved local authorities and the local population. The policy was defined at the national level but implemented by local authorities who were in close contact with the people. The financial resources necessary for the policy's implementation were allocated from the national budget by the central authority, which also exercised oversight and provided support for implementation.

46. **Mr. Yeung Sik Yuen** enquired whether the Gacaca courts had kept records of trials and whether the decisions of those courts could be appealed. If no records had been kept, he did not see how it would be possible to mount an appeal.

47. **Mr. Cali Tzay** said that he was concerned that some of the State party's policies in respect of the indigenous Batwa people might reflect a lack of understanding of their world view and way of life. The head of delegation had indicated that the Batwa had not been compensated for their lands because they had never exploited those lands. However, indigenous people lived as one with nature; they did not seek to exploit it. Similarly, the notions of land ownership and legal title were foreign to them. While the State party's efforts to provide suitable housing for the entire population were laudable, they might not

be in line with the Batwa's preferred way of life. Attempts to settle the Travellers in fixed dwellings in the United Kingdom and Ireland, for example, had failed for that reason. He wondered whether some of the State party's policies were in fact policies of acculturation that, while well-intended, might have a negative effect on some members of the population.

48. **Ms. Hohoueto** said that she would appreciate a comment on the function of the mediation committees. She was concerned that they might be serving as a filter that prevented cases from being brought to trial. If that was indeed the case, it impeded access to justice in Rwanda. She would also like to know whether there was a body responsible for assessing the constitutionality of laws. She remained concerned about lack of impartiality in the primary and intermediate courts, in which a single judge was responsible for prosecuting, investigating and ruling on cases. The single-judge system was particularly worrying with regard to the intermediate courts, which tried cases of genocide and crimes against humanity.

49. **Mr. Ngarambe** (Rwanda) said that comprehensive pretrial and trial records had been kept on cases heard by Gacaca courts. A national institution had been established to administer the Gacaca system, and one of its main roles had been to keep records. Those records had proved useful for appeals. Although attempts to force the assimilation of indigenous peoples with a different culture, language and way of life generally ended in failure, that was not what was happening in Rwanda. The people of Rwanda shared the same language, habits and culture. The Government was not seeking to impose assimilation and force people to embrace a particular identity, but rather to foster discussion and agreement on a common national identity.

50. The mediation committees did not work as a barrier to justice, as the parties in a case were always free to pursue further legal action if they were not satisfied with the decision of a mediation committee. Moreover, the committees were not empowered to hear all cases; criminal matters, for example, were tried in the courts. There was at present no specific body responsible for assessing the constitutionality of laws or judicial rulings. The judges of the Supreme Court performed that function.

51. The current one-judge system in intermediate and primary courts had been implemented after a three-judge system had proved ineffective. The single-judge system served to expedite procedures and also fostered greater accountability and respect for the law because the judges' work was monitored by the Supreme Court. He clarified that intermediate and primary court judges were not responsible for investigation, which was handled by the police and the prosecutor.

52. **Ms. Hohoueto** said that the Committee admired the State party's ability to overcome the atrocities of the 1994 genocide and to rebuild the country. She was reassured to learn that a mechanism was in place to measure the effectiveness of the various government programmes and policies. However, she remained concerned about the Government's approach to historically marginalized groups, who were treated in the same manner as other social groups although they lagged behind in areas such as education. Special measures were needed for such groups to bring them to the same level as other social groups so that they could then benefit in the same way from government assistance programmes. The Committee hoped to see special measures implemented for the benefit of the Batwa people. The Committee would also welcome statistics on access to justice, in particular complaints of discrimination lodged with the courts, the police, the National Commission for Human Rights and the Ombudsman.

53. **Mr. Ngarambe** said that he would ensure that the Committee received any additional information requested. Its concluding observations and recommendations would be forwarded to officials in Rwanda for action.

The meeting rose at 12.45.